
SENATE BILL 6759

State of Washington

55th Legislature

1998 Regular Session

By Senator Roach

Read first time 02/25/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to drunk driving; amending RCW 46.20.308,
2 46.20.3101, 46.61.502, 46.61.503, 46.61.504, 46.61.506, 88.12.025,
3 46.20.355, 46.20.391, 46.20.117, 46.20.120, 46.20.311, 46.68.041,
4 46.55.113, 46.55.120, 46.61.5058, 46.12.240, 46.12.095, 46.12.101,
5 46.55.105, 46.55.110, 46.55.130, 46.55.010, 46.55.100, 46.20.720, and
6 46.20.740; reenacting and amending RCW 46.61.5055; adding a new section
7 to chapter 46.68 RCW; adding a new section to chapter 46.12 RCW; adding
8 new sections to chapter 46.20 RCW; adding a new section to chapter
9 46.55 RCW; adding a new section to chapter 46.61 RCW; creating new
10 sections; repealing RCW 46.20.344; prescribing penalties; providing an
11 effective date; and declaring an emergency.

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

13 **Sec. 1.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to read
14 as follows:

15 (1) Any person who operates a motor vehicle within this state is
16 deemed to have given consent, subject to the provisions of RCW
17 46.61.506, to a test or tests of his or her breath or blood for the
18 purpose of determining the alcohol concentration or presence of any
19 drug in his or her breath or blood if arrested for any offense where,

1 at the time of the arrest, the arresting officer has reasonable grounds
2 to believe the person had been driving or was in actual physical
3 control of a motor vehicle while under the influence of intoxicating
4 liquor or any drug or was in violation of RCW 46.61.503.

5 (2) The test or tests of breath shall be administered at the
6 direction of a law enforcement officer having reasonable grounds to
7 believe the person to have been driving or in actual physical control
8 of a motor vehicle within this state while under the influence of
9 intoxicating liquor or the person to have been driving or in actual
10 physical control of a motor vehicle while having alcohol in a
11 concentration of ~~((0.02 or more))~~ in violation of RCW 46.61.503 in his
12 or her system and being under the age of twenty-one. However, in those
13 instances where the person is incapable due to physical injury,
14 physical incapacity, or other physical limitation, of providing a
15 breath sample or where the person is being treated in a hospital,
16 clinic, doctor's office, emergency medical vehicle, ambulance, or other
17 similar facility in which a breath testing instrument is not present or
18 where the officer has reasonable grounds to believe that the person is
19 under the influence of a drug, a blood test shall be administered by a
20 qualified person as provided in RCW 46.61.506(4). The officer shall
21 inform the person of his or her right to refuse the breath or blood
22 test, and of his or her right to have additional tests administered by
23 any qualified person of his or her choosing as provided in RCW
24 46.61.506. The officer shall warn the driver that:

25 (a) His or her license, permit, or privilege to drive will be
26 revoked or denied if he or she refuses to submit to the test;

27 (b) His or her license, permit, or privilege to drive will be
28 suspended, revoked, or denied ~~((, or placed in probationary status))~~ if
29 the test is administered and the test indicates the alcohol
30 concentration of the person's breath or blood is ~~((0.10))~~ 0.08 or more,
31 in the case of a person age twenty-one or over, or ~~((0.02 or more))~~ in
32 violation of RCW 46.61.503 in the case of a person under age twenty-
33 one; and

34 (c) His or her refusal to take the test may be used in a criminal
35 trial.

36 (3) Except as provided in this section, the test administered shall
37 be of the breath only. If an individual is unconscious or is under
38 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
39 or vehicular assault as provided in RCW 46.61.522, or if an individual

1 is under arrest for the crime of driving while under the influence of
2 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
3 results from an accident in which there has been serious bodily injury
4 to another person, a breath or blood test may be administered without
5 the consent of the individual so arrested.

6 (4) Any person who is dead, unconscious, or who is otherwise in a
7 condition rendering him or her incapable of refusal, shall be deemed
8 not to have withdrawn the consent provided by subsection (1) of this
9 section and the test or tests may be administered, subject to the
10 provisions of RCW 46.61.506, and the person shall be deemed to have
11 received the warnings required under subsection (2) of this section.

12 (5) If, following his or her arrest and receipt of warnings under
13 subsection (2) of this section, the person arrested refuses upon the
14 request of a law enforcement officer to submit to a test or tests of
15 his or her breath or blood, no test shall be given except as authorized
16 under subsection (3) or (4) of this section.

17 (6) If, after arrest and after the other applicable conditions and
18 requirements of this section have been satisfied, a test or tests of
19 the person's blood or breath is administered and the test results
20 indicate that the alcohol concentration of the person's breath or blood
21 is ~~((0.10))~~ 0.08 or more if the person is age twenty-one or over, or is
22 ~~((0.02 or more))~~ in violation of RCW 46.61.503 if the person is under
23 the age of twenty-one, or the person refuses to submit to a test, the
24 arresting officer or other law enforcement officer at whose direction
25 any test has been given, or the department, where applicable, if the
26 arrest results in a test of the person's blood, shall:

27 (a) Serve notice in writing on the person on behalf of the
28 department of its intention to suspend, revoke, or deny~~((, or place in~~
29 ~~probationary status))~~ the person's license, permit, or privilege to
30 drive as required by subsection (7) of this section;

31 (b) Serve notice in writing on the person on behalf of the
32 department of his or her right to a hearing, specifying the steps he or
33 she must take to obtain a hearing as provided by subsection (8) of this
34 section;

35 (c) Mark the person's Washington state driver's license or permit
36 to drive, if any, in a manner authorized by the department;

37 (d) Serve notice in writing that the marked license or permit, if
38 any, is a temporary license that is valid for sixty days from the date
39 of arrest or from the date notice has been given in the event notice is

1 given by the department following a blood test, or until the
2 suspension, revocation, or denial of the person's license, permit, or
3 privilege to drive is sustained at a hearing pursuant to subsection (8)
4 of this section, whichever occurs first. No temporary license is valid
5 to any greater degree than the license or permit that it replaces; and

6 (e) Immediately notify the department of the arrest and transmit to
7 the department within seventy-two hours, except as delayed as the
8 result of a blood test, a sworn report or report under a declaration
9 authorized by RCW 9A.72.085 that states:

10 (i) That the officer had reasonable grounds to believe the arrested
11 person had been driving or was in actual physical control of a motor
12 vehicle within this state while under the influence of intoxicating
13 liquor or drugs, or both, or was under the age of twenty-one years and
14 had been driving or was in actual physical control of a motor vehicle
15 while having an alcohol concentration of ~~((0.02 or more))~~ in violation
16 of RCW 46.61.503;

17 (ii) That after receipt of the warnings required by subsection (2)
18 of this section the person refused to submit to a test of his or her
19 blood or breath, or a test was administered and the results indicated
20 that the alcohol concentration of the person's breath or blood was
21 ~~((0.10))~~ 0.08 or more if the person is age twenty-one or over, or was
22 ~~((0.02 or more))~~ in violation of RCW 46.61.503 if the person is under
23 the age of twenty-one; and

24 (iii) Any other information that the director may require by rule.

25 (7) The department of licensing, upon the receipt of a sworn report
26 or report under a declaration authorized by RCW 9A.72.085 under
27 subsection (6)(e) of this section, shall suspend, revoke, or deny~~((, or~~
28 ~~place in probationary status))~~ the person's license, permit, or
29 privilege to drive or any nonresident operating privilege, as provided
30 in RCW 46.20.3101, such suspension, revocation, or denial~~((, or~~
31 ~~placement in probationary status))~~ to be effective beginning sixty days
32 from the date of arrest or from the date notice has been given in the
33 event notice is given by the department following a blood test, or when
34 sustained at a hearing pursuant to subsection (8) of this section,
35 whichever occurs first.

36 (8) A person receiving notification under subsection (6)(b) of this
37 section may, within thirty days after the notice has been given,
38 request in writing a formal hearing before the department. The person
39 shall pay a fee of one hundred dollars as part of the request. If the

1 request is mailed, it must be postmarked within thirty days after
2 receipt of the notification. Upon timely receipt of such a request for
3 a formal hearing, including receipt of the required one hundred dollar
4 fee, the department shall afford the person an opportunity for a
5 hearing. Except as otherwise provided in this section, the hearing is
6 subject to and shall be scheduled and conducted in accordance with RCW
7 46.20.329 and 46.20.332. The hearing shall be conducted in the county
8 of the arrest, except that all or part of the hearing may, at the
9 discretion of the department, be conducted by telephone or other
10 electronic means. The hearing shall be held within sixty days
11 following the arrest or following the date notice has been given in the
12 event notice is given by the department following a blood test, unless
13 otherwise agreed to by the department and the person, in which case the
14 action by the department shall be stayed, and any valid temporary
15 license marked under subsection (6)(c) of this section extended, if the
16 person is otherwise eligible for licensing. For the purposes of this
17 section, the scope of the hearing shall cover the issues of whether a
18 law enforcement officer had reasonable grounds to believe the person
19 had been driving or was in actual physical control of a motor vehicle
20 within this state while under the influence of intoxicating liquor or
21 any drug or had been driving or was in actual physical control of a
22 motor vehicle within this state while having alcohol in his or her
23 system in a concentration of ~~((0.02 or more))~~ in violation of RCW
24 46.61.503 and was under the age of twenty-one, whether the person was
25 placed under arrest, and (a) whether the person refused to submit to
26 the test or tests upon request of the officer after having been
27 informed that such refusal would result in the revocation of the
28 person's license, permit, or privilege to drive, or (b) if a test or
29 tests were administered, whether the applicable requirements of this
30 section were satisfied before the administration of the test or tests,
31 whether the person submitted to the test or tests, or whether a test
32 was administered without express consent as permitted under this
33 section, and whether the test or tests indicated that the alcohol
34 concentration of the person's breath or blood was ~~((0.10))~~ 0.08 or more
35 if the person was age twenty-one or over at the time of the arrest, or
36 was ~~((0.02 or more))~~ in violation of RCW 46.61.503 if the person was
37 under the age of twenty-one at the time of the arrest. The sworn
38 report or report under a declaration authorized by RCW 9A.72.085
39 submitted by a law enforcement officer is prima facie evidence that the

1 officer had reasonable grounds to believe the person had been driving
2 or was in actual physical control of a motor vehicle within this state
3 while under the influence of intoxicating liquor or drugs, or both, or
4 the person had been driving or was in actual physical control of a
5 motor vehicle within this state while having alcohol in his or her
6 system in a concentration of (~~0.02 or more~~) in violation of RCW
7 46.61.503 and was under the age of twenty-one and that the officer
8 complied with the requirements of this section.

9 A hearing officer shall conduct the hearing, may issue subpoenas
10 for the attendance of witnesses and the production of documents, and
11 shall administer oaths to witnesses. The hearing officer shall not
12 issue a subpoena for the attendance of a witness at the request of the
13 person unless the request is accompanied by the fee required by RCW
14 5.56.010 for a witness in district court. The sworn report or report
15 under a declaration authorized by RCW 9A.72.085 of the law enforcement
16 officer and any other evidence accompanying the report shall be
17 admissible without further evidentiary foundation and the
18 certifications authorized by the criminal rules for courts of limited
19 jurisdiction shall be admissible without further evidentiary
20 foundation. The person may be represented by counsel, may question
21 witnesses, may present evidence, and may testify. The department shall
22 order that the suspension, revocation, or denial(~~(, or placement in~~
23 ~~probationary status)~~) either be rescinded or sustained.

24 (9) If the suspension, revocation, or denial(~~(, or placement in~~
25 ~~probationary status)~~) is sustained after such a hearing, the person
26 whose license, privilege, or permit is suspended, revoked, or denied(~~(,~~
27 ~~or placed in probationary status)~~) has the right to file a petition in
28 the superior court of the county of arrest to review the final order of
29 revocation by the department in the same manner as an appeal from a
30 decision of a court of limited jurisdiction. The appellant must pay
31 the costs associated with obtaining the record of the hearing before
32 the hearing officer. The filing of the appeal does not stay the
33 effective date of the suspension, revocation, or denial(~~(, or placement~~
34 ~~in probationary status)~~). A petition filed under this subsection must
35 include the petitioner's grounds for requesting review. Upon granting
36 petitioner's request for review, the court shall review the
37 department's final order of suspension, revocation, or denial(~~(, or~~
38 ~~placement in probationary status)~~) as expeditiously as possible. If
39 judicial relief is sought for a stay or other temporary remedy from the

1 department's action, the court shall not grant such relief unless the
2 court finds that the appellant is likely to prevail in the appeal and
3 that without a stay the appellant will suffer irreparable injury. If
4 the court stays the suspension, revocation, or denial(~~(, or placement~~
5 ~~in probationary status))~~) it may impose conditions on such stay.

6 (10) If a person whose driver's license, permit, or privilege to
7 drive has been or will be suspended, revoked, or denied(~~(, or placed in~~
8 ~~probationary status))~~) under subsection (7) of this section, other than
9 as a result of a breath test refusal, and who has not committed an
10 offense within the last five years for which he or she was granted a
11 deferred prosecution under chapter 10.05 RCW, petitions a court for a
12 deferred prosecution on criminal charges arising out of the arrest for
13 which action has been or will be taken under subsection (7) of this
14 section, the court may direct the department to stay any actual or
15 proposed suspension, revocation, or denial(~~(, or placement in~~
16 ~~probationary status))~~) for at least forty-five days but not more than
17 ninety days. If the court stays the suspension, revocation, or
18 ~~denial((, or placement in probationary status))~~, it may impose
19 conditions on such stay. If the person is otherwise eligible for
20 licensing, the department shall issue a temporary license, or extend
21 any valid temporary license marked under subsection (6) of this
22 section, for the period of the stay. If a deferred prosecution
23 treatment plan is not recommended in the report made under RCW
24 10.05.050, or if treatment is rejected by the court, or if the person
25 declines to accept an offered treatment plan, or if the person violates
26 any condition imposed by the court, then the court shall immediately
27 direct the department to cancel the stay and any temporary marked
28 license or extension of a temporary license issued under this
29 subsection.

30 A suspension, revocation, or denial imposed under this section,
31 other than as a result of a breath test refusal, shall be stayed if the
32 person is accepted for deferred prosecution as provided in chapter
33 10.05 RCW for the incident upon which the suspension, revocation, or
34 denial is based. If the deferred prosecution is terminated, the stay
35 shall be lifted and the suspension, revocation, or denial reinstated.
36 If the deferred prosecution is completed, the stay shall be lifted and
37 the suspension, revocation, or denial canceled.

38 (11) When it has been finally determined under the procedures of
39 this section that a nonresident's privilege to operate a motor vehicle

1 in this state has been suspended, revoked, or denied, the department
2 shall give information in writing of the action taken to the motor
3 vehicle administrator of the state of the person's residence and of any
4 state in which he or she has a license.

5 **Sec. 2.** RCW 46.20.3101 and 1995 c 332 s 3 are each amended to read
6 as follows:

7 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
8 deny the arrested person's license, permit, or privilege to drive as
9 follows:

10 (1) In the case of a person who has refused a test or tests:

11 (a) For a first refusal within five years, where there has not been
12 a previous incident within five years that resulted in administrative
13 action under this section, revocation or denial for one year;

14 (b) For a second or subsequent refusal within five years, or for a
15 first refusal where there has been one or more previous incidents
16 within five years that have resulted in administrative action under
17 this section, revocation or denial for two years or until the person
18 reaches age twenty-one, whichever is longer. A revocation imposed
19 under this subsection (1)(b) shall run consecutively to the period of
20 any suspension, revocation, or denial imposed pursuant to a criminal
21 conviction arising out of the same incident.

22 (2) In the case of an incident where a person has submitted to or
23 been administered a test or tests indicating that the alcohol
24 concentration of the person's breath or blood was (~~(0.10)~~) 0.08 or
25 more:

26 (a) For a first incident within five years, where there has not
27 been a previous incident within five years that resulted in
28 administrative action under this section, (~~(placement in probationary~~
29 ~~status as provided in RCW 46.20.355)) suspension for ninety days;~~

30 (b) For a second or subsequent incident within five years,
31 revocation or denial for two years.

32 (3) In the case of an incident where a person under age twenty-one
33 has submitted to or been administered a test or tests indicating that
34 the alcohol concentration of the person's breath or blood was (~~(0.02 or~~
35 ~~more)) in violation of RCW 46.61.503:~~

36 (a) For a first incident within five years, suspension or denial
37 for ninety days;

1 (b) For a second or subsequent incident within five years,
2 revocation or denial for one year or until the person reaches age
3 twenty-one, whichever is longer.

4 **Sec. 3.** RCW 46.61.502 and 1994 c 275 s 2 are each amended to read
5 as follows:

6 (1) A person is guilty of driving while under the influence of
7 intoxicating liquor or any drug if the person drives a vehicle within
8 this state:

9 (a) And the person has, within two hours after driving, an alcohol
10 concentration of ((0.10)) 0.08 or higher as shown by analysis of the
11 person's breath or blood made under RCW 46.61.506; or

12 (b) While the person is under the influence of or affected by
13 intoxicating liquor or any drug; or

14 (c) While the person is under the combined influence of or affected
15 by intoxicating liquor and any drug.

16 (2) The fact that a person charged with a violation of this section
17 is or has been entitled to use a drug under the laws of this state
18 shall not constitute a defense against a charge of violating this
19 section.

20 (3) It is an affirmative defense to a violation of subsection
21 (1)(a) of this section which the defendant must prove by a
22 preponderance of the evidence that the defendant consumed a sufficient
23 quantity of alcohol after the time of driving and before the
24 administration of an analysis of the person's breath or blood to cause
25 the defendant's alcohol concentration to be ((0.10)) 0.08 or more
26 within two hours after driving. The court shall not admit evidence of
27 this defense unless the defendant notifies the prosecution prior to the
28 omnibus or pretrial hearing in the case of the defendant's intent to
29 assert the affirmative defense.

30 (4) Analyses of blood or breath samples obtained more than two
31 hours after the alleged driving may be used as evidence that within two
32 hours of the alleged driving, a person had an alcohol concentration of
33 ((0.10)) 0.08 or more in violation of subsection (1)(a) of this
34 section, and in any case in which the analysis shows an alcohol
35 concentration above 0.00 may be used as evidence that a person was
36 under the influence of or affected by intoxicating liquor or any drug
37 in violation of subsection (1)(b) or (c) of this section.

38 (5) A violation of this section is a gross misdemeanor.

1 **Sec. 4.** RCW 46.61.503 and 1995 c 332 s 2 are each amended to read
2 as follows:

3 (1) Notwithstanding any other provision of this title, a person is
4 guilty of driving a motor vehicle after consuming alcohol if the person
5 operates a motor vehicle within this state and the person:

6 (a) Is under the age of twenty-one;

7 (b) Has, within two hours after operating the motor vehicle, an
8 alcohol concentration of (~~0.02 or more~~) at least 0.02 but less than
9 the concentration specified in RCW 46.61.502, as shown by analysis of
10 the person's breath or blood made under RCW 46.61.506.

11 (2) It is an affirmative defense to a violation of subsection (1)
12 of this section which the defendant must prove by a preponderance of
13 the evidence that the defendant consumed a sufficient quantity of
14 alcohol after the time of driving and before the administration of an
15 analysis of the person's breath or blood to cause the defendant's
16 alcohol concentration to be (~~0.02 or more~~) in violation of subsection
17 (1) of this section within two hours after driving. The court shall
18 not admit evidence of this defense unless the defendant notifies the
19 prosecution prior to the earlier of: (a) Seven days prior to trial; or
20 (b) the omnibus or pretrial hearing in the case of the defendant's
21 intent to assert the affirmative defense.

22 (3) Analyses of blood or breath samples obtained more than two
23 hours after the alleged driving may be used as evidence that within two
24 hours of the alleged driving, a person had an alcohol concentration
25 (~~of 0.02 or more~~) in violation of subsection (1) of this section.

26 (4) A violation of this section is a misdemeanor.

27 **Sec. 5.** RCW 46.61.504 and 1994 c 275 s 3 are each amended to read
28 as follows:

29 (1) A person is guilty of being in actual physical control of a
30 motor vehicle while under the influence of intoxicating liquor or any
31 drug if the person has actual physical control of a vehicle within this
32 state:

33 (a) And the person has, within two hours after being in actual
34 physical control of the vehicle, an alcohol concentration of (~~0.10~~)
35 0.08 or higher as shown by analysis of the person's breath or blood
36 made under RCW 46.61.506; or

37 (b) While the person is under the influence of or affected by
38 intoxicating liquor or any drug; or

1 (c) While the person is under the combined influence of or affected
2 by intoxicating liquor and any drug.

3 (2) The fact that a person charged with a violation of this section
4 is or has been entitled to use a drug under the laws of this state does
5 not constitute a defense against any charge of violating this section.
6 No person may be convicted under this section if, prior to being
7 pursued by a law enforcement officer, the person has moved the vehicle
8 safely off the roadway.

9 (3) It is an affirmative defense to a violation of subsection
10 (1)(a) of this section which the defendant must prove by a
11 preponderance of the evidence that the defendant consumed a sufficient
12 quantity of alcohol after the time of being in actual physical control
13 of the vehicle and before the administration of an analysis of the
14 person's breath or blood to cause the defendant's alcohol concentration
15 to be ((0.10)) 0.08 or more within two hours after being in such
16 control. The court shall not admit evidence of this defense unless the
17 defendant notifies the prosecution prior to the omnibus or pretrial
18 hearing in the case of the defendant's intent to assert the affirmative
19 defense.

20 (4) Analyses of blood or breath samples obtained more than two
21 hours after the alleged being in actual physical control of a vehicle
22 may be used as evidence that within two hours of the alleged being in
23 such control, a person had an alcohol concentration of ((0.10)) 0.08 or
24 more in violation of subsection (1)(a) of this section, and in any case
25 in which the analysis shows an alcohol concentration above 0.00 may be
26 used as evidence that a person was under the influence of or affected
27 by intoxicating liquor or any drug in violation of subsection (1)(b) or
28 (c) of this section.

29 (5) A violation of this section is a gross misdemeanor.

30 **Sec. 6.** RCW 46.61.506 and 1995 c 332 s 18 are each amended to read
31 as follows:

32 (1) Upon the trial of any civil or criminal action or proceeding
33 arising out of acts alleged to have been committed by any person while
34 driving or in actual physical control of a vehicle while under the
35 influence of intoxicating liquor or any drug, if the person's alcohol
36 concentration is less than ((0.10)) 0.08, it is evidence that may be
37 considered with other competent evidence in determining whether the
38 person was under the influence of intoxicating liquor or any drug.

1 (2) The breath analysis shall be based upon grams of alcohol per
2 two hundred ten liters of breath. The foregoing provisions of this
3 section shall not be construed as limiting the introduction of any
4 other competent evidence bearing upon the question whether the person
5 was under the influence of intoxicating liquor or any drug.

6 (3) Analysis of the person's blood or breath to be considered valid
7 under the provisions of this section or RCW 46.61.502 or 46.61.504
8 shall have been performed according to methods approved by the state
9 toxicologist and by an individual possessing a valid permit issued by
10 the state toxicologist for this purpose. The state toxicologist is
11 directed to approve satisfactory techniques or methods, to supervise
12 the examination of individuals to ascertain their qualifications and
13 competence to conduct such analyses, and to issue permits which shall
14 be subject to termination or revocation at the discretion of the state
15 toxicologist.

16 (4) When a blood test is administered under the provisions of RCW
17 46.20.308, the withdrawal of blood for the purpose of determining its
18 alcoholic or drug content may be performed only by a physician, a
19 registered nurse, or a qualified technician. This limitation shall not
20 apply to the taking of breath specimens.

21 (5) The person tested may have a physician, or a qualified
22 technician, chemist, registered nurse, or other qualified person of his
23 or her own choosing administer one or more tests in addition to any
24 administered at the direction of a law enforcement officer. The
25 failure or inability to obtain an additional test by a person shall not
26 preclude the admission of evidence relating to the test or tests taken
27 at the direction of a law enforcement officer.

28 (6) Upon the request of the person who shall submit to a test or
29 tests at the request of a law enforcement officer, full information
30 concerning the test or tests shall be made available to him or her or
31 his or her attorney.

32 **Sec. 7.** RCW 88.12.025 and 1993 c 244 s 8 are each amended to read
33 as follows:

34 (1) It shall be unlawful for any person to operate a vessel in a
35 reckless manner.

36 (2) It shall be a violation for a person to operate a vessel while
37 under the influence of intoxicating liquor or any drug. A person is

1 considered to be under the influence of intoxicating liquor or any drug
2 if:

3 (a) The person has ~~((0.10))~~ 0.08 grams or more of alcohol per two
4 hundred ten liters of breath, as shown by analysis of the person's
5 breath made under RCW 46.61.506; or

6 (b) The person has ~~((0.10))~~ 0.08 percent or more by weight of
7 alcohol in the person's blood, as shown by analysis of the person's
8 blood made under RCW 46.61.506; or

9 (c) The person is under the influence of or affected by
10 intoxicating liquor or any drug; or

11 (d) The person is under the combined influence of or affected by
12 intoxicating liquor and any drug.

13 The fact that any person charged with a violation of this section
14 is or has been entitled to use such drug under the laws of this state
15 shall not constitute a defense against any charge of violating this
16 section. A person cited under this subsection may upon request be
17 given a breath test for breath alcohol or may request to have a blood
18 sample taken for blood alcohol analysis. An arresting officer shall
19 administer field sobriety tests when circumstances permit.

20 (3) A violation of this section is a misdemeanor, punishable as
21 provided under RCW 9.92.030. In addition, the court may order the
22 defendant to pay restitution for any damages or injuries resulting from
23 the offense.

24 NEW SECTION. **Sec. 8.** If sections 1 through 7 of this act mandate
25 an increased level of service by local governments, the local
26 government may, under RCW 43.135.060 and chapter 4.92 RCW, submit
27 claims for reimbursement by the legislature. The claims shall be
28 subject to verification by the office of financial management.

29 **Sec. 9.** RCW 46.20.355 and 1995 1st sp.s. c 17 s 1 are each amended
30 to read as follows:

31 (1) Upon ~~((placing a license, permit, or privilege to drive in
32 probationary status under RCW 46.20.3101(2)(a), or upon))~~ receipt of an
33 abstract indicating a deferred prosecution has been granted under RCW
34 10.05.060, or upon receipt of a notice of conviction of RCW 46.61.502
35 or 46.61.504, the department of licensing shall order the person to
36 surrender any Washington state driver's license that may be in his or
37 her possession. The department shall revoke the license, permit, or

1 privilege to drive of any person who fails to surrender it as required
2 by this section for one year, unless the license has been previously
3 surrendered to the department, a law enforcement officer, or a court,
4 or the person has completed an affidavit of lost, stolen, destroyed, or
5 previously surrendered license, such revocation to take effect thirty
6 days after notice is given of the requirement for license surrender.

7 (2) The department shall place a person's driving privilege in
8 probationary status as required by RCW 10.05.060(~~(, 46.20.308,)~~) or
9 46.61.5055 for a period of five years from the date the probationary
10 status is required to go into effect.

11 (3) Following receipt of an abstract indicating a deferred
12 prosecution has been granted under RCW 10.05.060, (~~(or following~~
13 ~~receipt of a sworn report under RCW 46.20.308 that requires immediate~~
14 ~~placement in probationary status under RCW 46.20.3101(2)(a),)~~) or upon
15 reinstatement or reissuance of a driver's license suspended or revoked
16 as the result of a conviction of RCW 46.61.502 or 46.61.504, the
17 department shall require the person to obtain a probationary license in
18 order to operate a motor vehicle in the state of Washington, except as
19 otherwise exempt under RCW 46.20.025. The department shall not issue
20 the probationary license unless the person is otherwise qualified for
21 licensing, and the person must renew the probationary license on the
22 same cycle as the person's regular license would have been renewed
23 until the expiration of the five-year probationary status period
24 imposed under subsection (2) of this section.

25 (4) For each original issue or renewal of a probationary license
26 under this section, the department shall charge a fee of fifty dollars
27 in addition to any other licensing fees required. Except for when
28 renewing a probationary license, the department shall waive the fifty-
29 dollar fee if the person has a probationary license in his or her
30 possession at the time a new probationary license is required.

31 (5) A probationary license shall enable the department and law
32 enforcement personnel to determine that the person is on probationary
33 status. The fact that a person's driving privilege is in probationary
34 status or that the person has been issued a probationary license shall
35 not be a part of the person's record that is available to insurance
36 companies.

37 **Sec. 10.** RCW 46.20.391 and 1995 c 332 s 12 are each amended to
38 read as follows:

1 (1) Any person licensed under this chapter who is convicted of an
2 offense relating to motor vehicles for which suspension or revocation
3 of the driver's license is mandatory, other than vehicular homicide or
4 vehicular assault, or who has had his or her license suspended under
5 RCW 46.20.3101 (2)(a) or (3)(a), may submit to the department an
6 application for an occupational driver's license. The department, upon
7 receipt of the prescribed fee and upon determining that the petitioner
8 is engaged in an occupation or trade that makes it essential that the
9 petitioner operate a motor vehicle, may issue an occupational driver's
10 license and may set definite restrictions as provided in RCW 46.20.394.
11 No person may petition for, and the department shall not issue, an
12 occupational driver's license that is effective during the first thirty
13 days of any suspension or revocation imposed for a violation of RCW
14 46.61.502 or 46.61.504 or pursuant to RCW 46.20.3101 (2)(a) or (3)(a).
15 A person aggrieved by the decision of the department on the application
16 for an occupational driver's license may request a hearing as provided
17 by rule of the department.

18 (2) An applicant for an occupational driver's license is eligible
19 to receive such license only if:

20 (a) Within one year immediately preceding the date of the offense
21 that gave rise to the present conviction, the applicant has not
22 committed any offense relating to motor vehicles for which suspension
23 or revocation of a driver's license is mandatory; and

24 (b) Within five years immediately preceding the date of the offense
25 that gave rise to the present conviction or incident, the applicant has
26 not committed any of the following offenses: (i) Driving or being in
27 actual physical control of a motor vehicle while under the influence of
28 intoxicating liquor; (ii) vehicular homicide under RCW 46.61.520; or
29 (iii) vehicular assault under RCW 46.61.522; and

30 (c) The applicant is engaged in an occupation or trade that makes
31 it essential that he or she operate a motor vehicle; and

32 (d) The applicant files satisfactory proof of financial
33 responsibility pursuant to chapter 46.29 RCW.

34 (3) The director shall cancel an occupational driver's license upon
35 receipt of notice that the holder thereof has been convicted of
36 operating a motor vehicle in violation of its restrictions, or of an
37 offense that pursuant to chapter 46.20 RCW would warrant suspension or
38 revocation of a regular driver's license. The cancellation is

1 effective as of the date of the conviction, and continues with the same
2 force and effect as any suspension or revocation under this title.

3 (4) The department may issue an occupational driver's license to a
4 person convicted of a violation of RCW 46.61.502 or 46.61.504 only if
5 the person has successfully completed all parts of the driver's license
6 examination in accordance with RCW 46.20.120 and has paid the following
7 fee in addition to any fee required elsewhere:

8 (a) One hundred dollars upon the person's first such conviction;

9 (b) Two hundred fifty dollars upon the person's second such
10 conviction; and

11 (c) Five hundred dollars upon the person's third or subsequent such
12 conviction.

13 The department shall clearly mark an occupational driver's license
14 issued under this subsection to indicate that the person's regular
15 license was suspended or revoked for a violation of RCW 46.61.502 or
16 46.61.504 or an equivalent violation under the laws of another state,
17 province, or other jurisdiction. The department shall continue to so
18 mark any driver's license it issues to that person for five years after
19 a conviction under RCW 46.61.502 or 46.61.504.

20 **Sec. 11.** RCW 46.20.117 and 1993 c 452 s 3 are each amended to read
21 as follows:

22 (1) The department shall issue "identicards," containing a picture,
23 to nondrivers for a fee of four dollars. However, the fee shall be the
24 actual cost of production to recipients of continuing public assistance
25 grants under Title 74 RCW who are referred in writing to the department
26 by the secretary of social and health services. The fee shall be
27 deposited in the highway safety fund. To be eligible, each applicant
28 shall produce evidence as required in RCW 46.20.035 that positively
29 proves identity. The "identicard" shall be distinctly designed so that
30 it will not be confused with the official driver's license. The
31 identicard shall expire on the fifth anniversary of the applicant's
32 birthdate after issuance.

33 (2) The department may cancel an "identicard" upon a showing by its
34 records or other evidence that the holder of such "identicard" has
35 committed a violation relating to "identicards" defined in RCW
36 46.20.336.

37 (3) The department shall cancel an "identicard" upon a showing by
38 its records or other evidence that the holder of the identicard has

1 been convicted of a violation of RCW 46.61.502 or 46.61.504. To obtain
2 an identicard within five years of the conviction, the person must
3 reapply and pay the normal fee.

4 The department shall clearly mark an identicard issued under this
5 subsection to indicate that the person has been convicted of driving
6 under the influence of alcohol or drugs within the last five years.

7 **Sec. 12.** RCW 46.20.120 and 1990 c 9 s 1 are each amended to read
8 as follows:

9 No new driver's license may be issued and no previously issued
10 license may be renewed until the applicant therefor has successfully
11 passed a driver licensing examination. However, the department may
12 waive all or any part of the examination of any person applying for the
13 renewal of a driver's license except when the department determines
14 that an applicant for a driver's license is not qualified to hold a
15 driver's license under this title. The department may also waive the
16 actual demonstration of the ability to operate a motor vehicle by a
17 person who surrenders a valid driver's license issued by the person's
18 previous home state and who is otherwise qualified to be licensed. The
19 department may not waive any part of the examination for a person whose
20 license has been suspended or revoked within the last five years for
21 conviction of a violation of RCW 46.61.502 or 46.61.504, but shall
22 require the person to successfully complete all parts of the
23 examination. For a new license examination a fee of seven dollars
24 shall be paid by each applicant, in addition to the fee charged for
25 issuance of the license. A new license is one issued to a driver who
26 has not been previously licensed in this state or to a driver whose
27 last previous Washington license has been expired for more than four
28 years.

29 Any person renewing his or her driver's license more than sixty
30 days after the license has expired shall pay a penalty fee of ten
31 dollars in addition to the renewal fee under RCW 46.20.181. The
32 penalty fee shall be deposited in the highway safety fund.

33 Any person who is outside the state at the time his or her driver's
34 license expires or who is unable to renew the license due to any
35 incapacity may renew the license within sixty days after returning to
36 this state or within sixty days after the termination of any such
37 incapacity without the payment of the penalty fee.

1 The department shall provide for giving examinations at places and
2 times reasonably available to the people of this state.

3 **Sec. 13.** RCW 46.20.311 and 1997 c 58 s 807 are each amended to
4 read as follows:

5 (1) The department shall not suspend a driver's license or
6 privilege to drive a motor vehicle on the public highways for a fixed
7 period of more than one year, except as specifically permitted under
8 RCW 46.20.342 or other provision of law. Except for a suspension under
9 RCW 46.20.289, 46.20.291(5), or 74.20A.320, whenever the license or
10 driving privilege of any person is suspended by reason of a conviction,
11 a finding that a traffic infraction has been committed, pursuant to
12 chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the
13 suspension shall remain in effect until the person gives and thereafter
14 maintains proof of financial responsibility for the future as provided
15 in chapter 46.29 RCW. If the suspension is the result of a violation
16 of RCW 46.61.502 or 46.61.504, the department shall determine the
17 person's eligibility for licensing based upon the reports provided by
18 the alcoholism agency or probation department designated under RCW
19 46.61.5056 and shall deny reinstatement until enrollment and
20 participation in an approved program has been established and the
21 person is otherwise qualified. Whenever the license or driving
22 privilege of any person is suspended as a result of certification of
23 noncompliance with a child support order under chapter 74.20A RCW or a
24 residential or visitation order, the suspension shall remain in effect
25 until the person provides a release issued by the department of social
26 and health services stating that the person is in compliance with the
27 order. The department shall not issue to the person a new, duplicate,
28 or renewal license until the person pays a reissue fee of twenty
29 dollars. If the suspension is the result of a violation of RCW
30 46.61.502 or 46.61.504, or is the result of administrative action under
31 RCW 46.20.308, the reissue fee shall be ~~((fifty dollars))~~ the normal
32 driver's license fee plus the following amount:

- 33 (a) One hundred dollars upon the person's first such conviction;
34 (b) Two hundred fifty dollars upon the person's second such
35 conviction; and
36 (c) Five hundred dollars upon the person's third or subsequent such
37 conviction.

1 (2) Any person whose license or privilege to drive a motor vehicle
2 on the public highways has been revoked, unless the revocation was for
3 a cause which has been removed, is not entitled to have the license or
4 privilege renewed or restored until: (a) After the expiration of one
5 year from the date the license or privilege to drive was revoked; (b)
6 after the expiration of the applicable revocation period provided by
7 RCW 46.20.3101 or 46.61.5055; (c) after the expiration of two years for
8 persons convicted of vehicular homicide; or (d) after the expiration of
9 the applicable revocation period provided by RCW 46.20.265. After the
10 expiration of the appropriate period, the person may make application
11 for a new license as provided by law together with a reissue fee in the
12 amount of twenty dollars, but if the revocation is the result of a
13 violation of RCW 46.20.308, 46.61.502, or 46.61.504, the reissue fee
14 shall be (~~fifty dollars~~) the normal driver's license fee plus the
15 following amount:

16 (i) One hundred dollars upon the person's first such conviction;

17 (ii) Two hundred fifty dollars upon the person's second such
18 conviction; and

19 (iii) Five hundred dollars upon the person's third or subsequent
20 such conviction. If the revocation is the result of a violation of RCW
21 46.61.502 or 46.61.504, the department shall determine the person's
22 eligibility for licensing based upon the reports provided by the
23 alcoholism agency or probation department designated under RCW
24 46.61.5056 and shall deny reissuance of a license, permit, or privilege
25 to drive until enrollment and participation in an approved program has
26 been established and the person is otherwise qualified. Except for a
27 revocation under RCW 46.20.265, the department shall not then issue a
28 new license unless it is satisfied after investigation of the driving
29 ability of the person that it will be safe to grant the privilege of
30 driving a motor vehicle on the public highways, and until the person
31 gives and thereafter maintains proof of financial responsibility for
32 the future as provided in chapter 46.29 RCW. For a revocation under
33 RCW 46.20.265, the department shall not issue a new license unless it
34 is satisfied after investigation of the driving ability of the person
35 that it will be safe to grant that person the privilege of driving a
36 motor vehicle on the public highways.

37 (3) Whenever the driver's license of any person is suspended
38 pursuant to Article IV of the nonresident violators compact or RCW
39 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue

1 to the person any new or renewal license until the person pays a
2 reissue fee of twenty dollars. If the suspension is the result of a
3 violation of the laws of this or any other state, province, or other
4 jurisdiction involving (a) the operation or physical control of a motor
5 vehicle upon the public highways while under the influence of
6 intoxicating liquor or drugs, or (b) the refusal to submit to a
7 chemical test of the driver's blood alcohol content, the reissue fee
8 shall be (~~fifty dollars~~) the normal driver's license fee plus the
9 following amount:

10 (i) One hundred dollars upon the person's first such conviction;

11 (ii) Two hundred fifty dollars upon the person's second such
12 conviction; and

13 (iii) Five hundred dollars upon the person's third or subsequent
14 such conviction.

15 (4) The department shall clearly mark a driver's license reissued
16 under this section that had been suspended or revoked for a violation
17 of RCW 46.61.502 or 46.61.504 or an equivalent violation under the laws
18 of another state, province, or other jurisdiction to indicate that the
19 person has been convicted of such a violation within the last five
20 years. The department shall continue to so mark any driver's license
21 it issues to that person for five years.

22 NEW SECTION. Sec. 14. A new section is added to chapter 46.68 RCW
23 to read as follows:

24 The impaired driving safety account is created in the custody of
25 the state treasurer. All receipts from fees collected under RCW
26 46.20.311(1) (a), (b), and (c), (2)(d) (i), (ii), and (iii), and (3)(b)
27 (i), (ii), and (iii) and 46.20.391(4) (a), (b), and (c) shall be
28 deposited in the account. Expenditures from this account may be used
29 only by the Washington traffic safety commission to fund projects to
30 reduce impaired driving. Only the director of the traffic safety
31 commission or the director's designee may authorize expenditures from
32 the account. The account is subject to allotment procedures under
33 chapter 43.88 RCW, but no appropriation is required for expenditures
34 until July 1, 2001, after which date moneys in the account may be spent
35 only after appropriation.

36 **Sec. 15.** RCW 46.68.041 and 1995 2nd sp.s. c 3 s 1 are each amended
37 to read as follows:

1 (1) Except as provided in subsection (2) of this section, the
2 department shall forward all funds accruing under the provisions of
3 chapter 46.20 RCW together with a proper identifying, detailed report
4 to the state treasurer who shall deposit such moneys to the credit of
5 the highway safety fund.

6 (2) Seventy-five percent of each fee collected by the department
7 under RCW 46.20.311(1) (a), (b), and (c), (2)(d) (i), (ii), and (iii),
8 and (3)(b) (i), (ii), and (iii) and 46.20.391(4) (a), (b), and (c)
9 shall be deposited in the impaired driving safety account.

10 NEW SECTION. Sec. 16. The legislature finds that in 1996 drunk
11 drivers were involved in two hundred eighty-five fatal accidents
12 killing three hundred thirty-one people and six thousand four hundred
13 fifty injury accidents injuring ten thousand three hundred twenty-six
14 people. The legislature has increased criminal penalties, including
15 longer mandatory minimum jail sentences and fines, in order to punish
16 and deter drunk driving. In addition to criminal sanctions, however,
17 the legislature finds that authorizing the immediate impoundment of
18 vehicles driven by drunk drivers and in the case of repeat offenders
19 the forfeiture of such vehicles is reasonably necessary to increase
20 traffic safety and reduce the carnage caused by drunk driving. A
21 number of studies in states that have adopted impound and forfeiture
22 laws have found them effective in reducing drunk driving and related
23 fatalities. Repeat drunk drivers are more likely to continue to
24 reoffend and are substantially more likely to cause a fatal collision
25 than first-time offenders. Temporary impoundment for first-time
26 offenders and forfeiture for repeat offenders will reduce drunk
27 drivers' access to vehicles and help both prevent and deter drunk
28 driving. The impoundment or forfeiture of a vehicle operated in
29 violation of RCW 46.61.502 or 46.61.504 is intended to be a civil in
30 rem action against the vehicle in order to remove it from the public
31 highways and reduce the risk posed to traffic safety by a vehicle
32 accessible to a driver who is reasonably believed to have violated
33 these laws.

34 **Sec. 17.** RCW 46.55.113 and 1997 c 66 s 7 are each amended to read
35 as follows:

36 Whenever the driver of a vehicle is arrested for a violation of RCW
37 46.61.502 or 46.61.504 or any similar municipal ordinance, the

1 (~~arresting officer may take custody of the vehicle and provide for its~~
2 ~~prompt removal to a place of safety~~) vehicle is subject to
3 impoundment, pursuant to applicable local ordinance or state agency
4 rule at the direction of a law enforcement officer. If the driver is
5 in violation of a restriction under RCW 46.20.720 or 46.61.5055 to
6 operate only a motor vehicle equipped with an ignition interlock or
7 other biological or technical device, the arresting officer shall take
8 custody of the vehicle and provide for its prompt removal to a place of
9 safety. The vehicle will remain impounded for use as evidence at a
10 trial regarding the violation of the restriction. In addition, a
11 police officer may take custody of a vehicle and provide for its prompt
12 removal to a place of safety under any of the following circumstances:
13 (1) Whenever a police officer finds a vehicle standing upon the
14 roadway in violation of any of the provisions of RCW 46.61.560, the
15 officer may provide for the removal of the vehicle or require the
16 driver or other person in charge of the vehicle to move the vehicle to
17 a position off the roadway;
18 (2) Whenever a police officer finds a vehicle unattended upon a
19 highway where the vehicle constitutes an obstruction to traffic or
20 jeopardizes public safety;
21 (3) Whenever a police officer finds an unattended vehicle at the
22 scene of an accident or when the driver of a vehicle involved in an
23 accident is physically or mentally incapable of deciding upon steps to
24 be taken to protect his or her property;
25 (4) Whenever the driver of a vehicle is arrested and taken into
26 custody by a police officer;
27 (5) Whenever a police officer discovers a vehicle that the officer
28 determines to be a stolen vehicle;
29 (6) Whenever a vehicle without a special license plate, card, or
30 decal indicating that the vehicle is being used to transport a disabled
31 person under RCW 46.16.381 is parked in a stall or space clearly and
32 conspicuously marked under RCW 46.61.581 which space is provided on
33 private property without charge or on public property;
34 (7) Upon determining that a person is operating a motor vehicle
35 without a valid driver's license in violation of RCW 46.20.005 or with
36 a license that has been expired for ninety days or more(~~, or with a~~
37 ~~suspended or revoked license in violation of RCW 46.20.342 or~~
38 ~~46.20.420~~)).

1 Nothing in this section may derogate from the powers of police
2 officers under the common law. For the purposes of this section, a
3 place of safety may include the business location of a registered tow
4 truck operator.

5 **Sec. 18.** RCW 46.55.120 and 1996 c 89 s 2 are each amended to read
6 as follows:

7 (1) Vehicles or other items of personal property registered or
8 titled with the department that are impounded by registered tow truck
9 operators pursuant to RCW 46.55.080, 46.55.085, ~~((or))~~ 46.55.113, or
10 section 26 of this act may be redeemed only under the following
11 circumstances:

12 (a) Only the legal owner, the registered owner, a person authorized
13 in writing by the registered owner or the vehicle's insurer, a person
14 who is determined and verified by the operator to have the permission
15 of the registered owner of the vehicle or other item of personal
16 property registered or titled with the department, or one who has
17 purchased a vehicle or item of personal property registered or titled
18 with the department from the registered owner who produces proof of
19 ownership or written authorization and signs a receipt therefor, may
20 redeem an impounded vehicle or items of personal property registered or
21 titled with the department. In addition, any person redeeming a
22 vehicle impounded under section 26 of this act or because the driver
23 was arrested for a violation of RCW 46.61.502 or 46.61.504 must prior
24 to redemption establish with the agency that ordered the vehicle
25 impounded that he or she has a valid driver's license and is in
26 compliance with RCW 46.30.020. A vehicle impounded under section 26 of
27 this act or because the driver is arrested for a violation of RCW
28 46.61.502 or 46.61.504 may be released only pursuant to a written order
29 from the agency that ordered the vehicle impounded, or pursuant to a
30 provision of a state agency rule or local ordinance authorizing release
31 on the basis of economic or personal hardship to the spouse of the
32 operator, taking into consideration public safety factors, including
33 the operator's criminal history and driving record.

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

1 storing any such vehicle. In addition, if a vehicle is impounded under
2 section 26 of this act and was being operated by the registered owner
3 when it was impounded, it must not be released to any person until the
4 registered owner establishes with the agency that ordered the vehicle
5 impounded that any penalties, fines, or forfeitures owed by him or her
6 have been satisfied. Commercially reasonable tender shall include,
7 without limitation, cash, major bank credit cards, or personal checks
8 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 or
10 municipal court shall proceed to hear and determine the validity of the
11 impoundment.

12 (3)(a) The district or municipal court, within five days after the
13 request for a hearing, shall notify the registered tow truck operator,
14 the 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 consider a
21 written report made under oath by the officer who authorized the
22 impoundment in lieu of the officer's personal appearance at the
23 hearing.

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

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

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

1 shall be returned or discharged as appropriate, and the person or
2 agency who authorized the impoundment shall be liable for any towing,
3 storage, or other impoundment fees permitted under this chapter. The
4 court shall enter judgment in favor of the registered tow truck
5 operator against the person or agency authorizing the impound for the
6 impoundment, towing, and storage fees paid. In addition, the court
7 shall enter judgment in favor of the registered and legal owners of the
8 vehicle, or other item of personal property registered or titled with
9 the department, for the amount of the filing fee required by law for
10 the impound hearing petition as well as reasonable damages for loss of
11 the use of the vehicle during the time the same was impounded, for not
12 less than fifty dollars per day, against the person or agency
13 authorizing the impound. However, if an impoundment under section 26
14 of this act or arising from an alleged violation of RCW 46.61.502 or
15 46.61.504 is determined to be in violation of this chapter, then the
16 law enforcement officer directing the impoundment and the government
17 employing the officer are not liable for damages if the officer had
18 probable cause to believe the driver of the vehicle was in violation of
19 RCW 46.61.502 or 46.61.504 or if the officer relied in good faith and
20 without gross negligence on the records of the department in
21 ascertaining that the operator of the vehicle had a suspended or
22 revoked driver's license. If any judgment entered is not paid within
23 fifteen days of notice in writing of its entry, the court shall award
24 reasonable attorneys' fees and costs against the defendant in any
25 action to enforce the judgment. Notice of entry of judgment may be
26 made by registered or certified mail, and proof of mailing may be made
27 by affidavit of the party mailing the notice. Notice of the entry of
28 the judgment shall read essentially as follows:

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

1 Signature
2 Typed name and address
3 of party mailing notice

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

12 **Sec. 19.** RCW 46.61.5058 and 1995 c 332 s 6 are each amended to
13 read as follows:

14 ~~(1) ((Upon the arrest of a person or upon the filing of a~~
15 ~~complaint, citation, or information in a court of competent~~
16 ~~jurisdiction, based upon probable cause to believe that a person has~~
17 ~~violated RCW 46.61.502 or 46.61.504 or any similar municipal ordinance,~~
18 ~~if such person has a prior offense within five years as defined in RCW~~
19 ~~46.61.5055, and where the person has been provided written notice that~~
20 ~~any transfer, sale, or encumbrance of such person's interest in the~~
21 ~~vehicle over which that person was actually driving or had physical~~
22 ~~control when the violation occurred, is unlawful pending either~~
23 ~~acquittal, dismissal, sixty days after conviction, or other termination~~
24 ~~of the charge, such person shall be prohibited from encumbering,~~
25 ~~selling, or transferring his or her interest in such vehicle, except as~~
26 ~~otherwise provided in (a), (b), and (c) of this subsection, until~~
27 ~~either acquittal, dismissal, sixty days after conviction, or other~~
28 ~~termination of the charge. The prohibition against transfer of title~~
29 ~~shall not be stayed pending the determination of an appeal from the~~
30 ~~conviction.~~

31 ~~(a) A vehicle encumbered by a bona fide security interest may be~~
32 ~~transferred to the secured party or to a person designated by the~~
33 ~~secured party;~~

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

37 ~~(c) A vehicle may be transferred to a third party or a vehicle~~
38 ~~dealer who is a bona fide purchaser or may be subject to a bona fide~~

1 security interest in the vehicle unless it is established that (i) in
2 the case of a purchase by a third party or vehicle dealer, such party
3 or dealer had actual notice that the vehicle was subject to the
4 prohibition prior to the purchase, or (ii) in the case of a security
5 interest, the holder of the security interest had actual notice that
6 the vehicle was subject to the prohibition prior to the encumbrance of
7 title.

8 (2) On conviction for a violation of either RCW 46.61.502 or
9 46.61.504 or any similar municipal ordinance where the person convicted
10 has a prior offense within five years as defined in RCW 46.61.5055, the
11 motor vehicle the person was driving or over which the person had
12 actual physical control at the time of the offense, if the person has
13 a financial interest in the vehicle, is subject to seizure and
14 forfeiture pursuant to this section.

15 (3) A vehicle subject to forfeiture under this chapter may be
16 seized by a law enforcement officer of this state upon process issued
17 by a court of competent jurisdiction. Seizure of a vehicle may be made
18 without process if the vehicle subject to seizure has been the subject
19 of a prior judgment in favor of the state in a forfeiture proceeding
20 based upon this section.

21 (4) Seizure under subsection (3) of this section automatically
22 commences proceedings for forfeiture. The law enforcement agency under
23 whose authority the seizure was made shall cause notice of the seizure
24 and)) If a vehicle is impounded because the operator is arrested for a
25 violation of RCW 46.61.502 or 46.61.504, the vehicle may be held for up
26 to fifteen days at the written direction of the agency ordering the
27 vehicle impounded and must not be released until a person eligible to
28 redeem it under RCW 46.55.120(1)(a) pays all towing, removal, and
29 storage fees, notwithstanding the fact that the impoundment was ordered
30 by a government agency. However, if the department's records show that
31 the operator has a prior offense as defined in RCW 46.61.5055(9), and
32 the operator has a financial interest in the vehicle, the vehicle is
33 subject to forfeiture unless an applicable state agency rule or local
34 ordinance prohibits forfeiture on the basis of economic or personal
35 hardship to the spouse of the operator, taking into consideration
36 public safety factors, including the operator's criminal history and
37 driving record. If the vehicle is forfeited, then the forfeiting
38 agency shall pay all the impoundment, towing, and storage fees for the
39 vehicle and shall be entitled to recover those fees from the operator

1 of the forfeited vehicle, including any attorneys' fees, costs of
2 collection, and interest at the statutory rate for judgment interest
3 from the date of payment by the agency of such fees.

4 (2) A forfeiture proceeding is commenced by the law enforcement
5 agency causing notice of the intended forfeiture of the seized vehicle
6 to be served ((within fifteen)) not less than ten days after the
7 seizure on the registered tow truck operator that impounded the
8 vehicle, on the owner of the vehicle seized, on the person in charge of
9 the vehicle when it was seized, and on any person having a known right
10 or interest in the vehicle, including a community property interest.
11 The notice ((of seizure)) may be served by any method authorized by law
12 or court rule, including but not limited to service by certified mail
13 with return receipt requested. Service by mail is complete upon
14 mailing ((within the fifteen day period after the seizure)). Notice
15 ((of seizure)) in the case of ((property)) a vehicle subject to a
16 security interest that has been perfected on a certificate of title or
17 by compliance with section 23 of this act shall be made by service upon
18 the secured party or the secured party's assignee at the address shown
19 on the financing statement ((or)), the certificate of title, or the
20 transitional ownership record. Once the registered tow truck operator
21 that impounded the vehicle receives notice, the vehicle must not be
22 released except upon written order of the chief law enforcement officer
23 of the agency directing the impoundment or his or her designee, an
24 administrative law judge, or a court.

25 ((+5)) (3) If no person notifies the seizing law enforcement
26 agency in writing of the person's claim of ownership or right to
27 possession of the seized vehicle within forty-five days of the seizure,
28 the vehicle is deemed forfeited.

29 ((+6)) (4) If a person notifies the seizing law enforcement agency
30 in writing of the person's claim of ownership or right to possession of
31 the seized vehicle within forty-five days of the seizure, the law
32 enforcement agency shall give the person or persons a reasonable
33 opportunity to be heard as to the claim or right. At the hearing, if
34 the seizing agency proves by a preponderance of the evidence that the
35 vehicle was operated by a person in violation of RCW 46.61.502 or
36 46.61.504, and that person has a prior offense as defined by RCW
37 46.61.5055(9), and has an ownership interest in the vehicle, then the
38 vehicle shall be forfeited. The hearing shall be before the chief law
39 enforcement officer of the seizing agency or the chief law enforcement

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

26 ~~((+7))~~ (5) When a vehicle is forfeited under this chapter the
27 seizing law enforcement agency may sell the vehicle, retain it for
28 official use, or upon application by a law enforcement agency of this
29 state release the vehicle to that agency for the exclusive use of
30 enforcing this title; provided, however, that the agency shall first
31 satisfy any bona fide security interest to which the vehicle is subject
32 ~~((under subsection (1) (a) or (c) of this section))~~ and provided
33 further that where the ownership interest subject to forfeiture is bona
34 fide community property, the value of the undivided community property
35 interest of the spouse who was not operating the vehicle in violation
36 of RCW 46.61.502 or 46.61.504 shall not be forfeited nor subject to
37 reduction for towing, removal, or storage charges associated with the
38 forfeiture action. The value of the undivided community property
39 interest not subject to forfeiture or reduction is one-half of the

1 value of the vehicle as defined in subsection (12) of this section
2 after deducting the cost of satisfying any bona fide security interest.
3 ~~((+8))~~ (6) When a vehicle is forfeited, the seizing agency shall
4 keep a record indicating the identity of the prior owner, if known, a
5 description of the vehicle, the disposition of the vehicle, the value
6 of the vehicle at the time of seizure, and the amount of proceeds
7 realized from disposition of the vehicle.
8 ~~((+9))~~ (7) Each seizing agency shall retain records of forfeited
9 vehicles for at least seven years.
10 ~~((+10))~~ (8) Each seizing agency shall file a report including a
11 copy of the records of forfeited vehicles with the state treasurer each
12 calendar quarter.
13 ~~((+11))~~ (9) The quarterly report need not include a record of a
14 forfeited vehicle that is still being held for use as evidence during
15 the investigation or prosecution of a case or during the appeal from a
16 conviction.
17 ~~((+12))~~ (10) By January 31st of each year, each seizing agency
18 shall remit to the state treasurer an amount equal to ten percent of
19 the net proceeds of vehicles forfeited during the preceding calendar
20 year. Money remitted shall be deposited in the public safety and
21 education account.
22 ~~((+13))~~ (11) The net proceeds of a forfeited vehicle is the value
23 of the forfeitable interest in the vehicle after deducting the cost of
24 satisfying a bona fide community property interest and security
25 interest to which the vehicle is subject at the time of seizure and all
26 towing, removal, and storage fees; and in the case of a sold vehicle,
27 after deducting the cost of sale, including reasonable fees or
28 commissions paid to independent selling agents.
29 ~~((+14))~~ (12) The value of a sold forfeited vehicle is the sale
30 price. The value of a retained forfeited vehicle is the fair market
31 value of the vehicle at the time of seizure, determined when possible
32 by reference to an applicable commonly used index, such as the index
33 used by the department of licensing. A seizing agency may, but need
34 not, use an independent qualified appraiser to determine the value of
35 retained vehicles. If an appraiser is used, the value of the vehicle
36 appraised is net of the cost of the appraisal.
37 (13) When a vehicle is forfeited under this chapter, the seizing
38 law enforcement agency shall send to the department a copy of the order
39 of forfeiture. Upon receipt of that order, the department shall cancel

1 the registration and license plates of the vehicle. A new registration
2 and license plates may be issued for the vehicle only to: (a) A person
3 who purchases the vehicle from the seizing law enforcement agency; (b)
4 the seizing law enforcement agency; or (c) another law enforcement
5 agency.

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

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

18 **Sec. 20.** RCW 46.12.240 and 1987 c 388 s 8 are each amended to read
19 as follows:

20 (1) The suspension, revocation, cancellation, or refusal by the
21 director of any license or certificate provided for in chapters 46.12
22 and 46.16 RCW is conclusive unless the person whose license or
23 certificate is suspended, revoked, canceled, or refused appeals to the
24 superior court of Thurston county, or at his option to the superior
25 court of the county of his residence, for the purpose of having the
26 suspension, revocation, cancellation, or refusal of the license or
27 certificate set aside. Notice of appeal must be filed within ten days
28 after receipt of the notice of suspension, revocation, cancellation, or
29 refusal. Upon the filing of the notice of appeal the court shall issue
30 an order to the director to show cause why the license should not be
31 granted or reinstated, which order shall be returnable not less than
32 ten days after the date of service thereof upon the director. Service
33 shall be in the manner prescribed for service of summons and complaint
34 in other civil actions. Upon the hearing on the order to show cause,
35 the court shall hear evidence concerning matters with reference to the
36 suspension, revocation, cancellation, or refusal of the license or
37 certificate and shall enter judgment either affirming or setting aside
38 the suspension, revocation, cancellation, or refusal.

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

3 **Sec. 21.** RCW 46.12.095 and 1969 ex.s. c 170 s 16 are each amended
4 to read as follows:

5 A security interest in a vehicle other than one held as inventory
6 by a manufacturer or a dealer and for which a certificate of ownership
7 is required is perfected only by compliance with the requirements of
8 section 23 of this act under the circumstances provided for therein or
9 by compliance with the requirements of this section:

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

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

22 (3) If a vehicle is subject to a security interest when brought
23 into this state, perfection of the security interest is determined by
24 the law of the jurisdiction where the vehicle was when the security
25 interest was attached, subject to the following:

26 (a) If the security interest was perfected under the law of the
27 jurisdiction where the vehicle was when the security interest was
28 attached, the following rules apply:

29 (b) If the name of the secured party is shown on the existing
30 certificate of ownership issued by that jurisdiction, the security
31 interest continues perfected in this state. The name of the secured
32 party shall be shown on the certificate of ownership issued for the
33 vehicle by this state. The security interest continues perfected in
34 this state upon the issuance of such ownership certificate.

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

1 **Sec. 22.** RCW 46.12.101 and 1991 c 339 s 19 are each amended to
2 read as follows:

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

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

30 (2) The requirements of subsection (1) of this section to provide
31 an odometer disclosure statement apply to the transfer of vehicles held
32 for lease when transferred to a lessee and then to the lessor at the
33 end of the leasehold and to vehicles held in a fleet when transferred
34 to a purchaser.

35 (3) Except as provided in RCW (~~46.12.120~~) 46.70.122 the
36 transferee shall within fifteen days after delivery to the transferee
37 of the vehicle, execute the application for a new certificate of
38 ownership in the same space provided therefor on the certificate or as

1 the department prescribes, and cause the certificates and application
2 to be transmitted to the department.

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

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

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

- 27 (a) The department requesting additional supporting documents;
- 28 (b) Extended hospitalization or illness of the purchaser;
- 29 (c) Failure of a legal owner to release his or her interest;
- 30 (d) Failure, negligence, or nonperformance of the department,
31 auditor, or subagent.

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

35 (7) Upon receipt of an application for reissue or replacement of a
36 certificate of ownership and transfer of license registration,
37 accompanied by the endorsed certificate of ownership or other
38 documentary evidence as is deemed necessary, the department shall, if
39 the application is in order and if all provisions relating to the

1 certificate of ownership and license registration have been complied
2 with, issue new certificates of title and license registration as in
3 the case of an original issue and shall transmit the fees together with
4 an itemized detailed report to the state treasurer, to be deposited in
5 the motor vehicle fund.

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

9 NEW SECTION. **Sec. 23.** A new section is added to chapter 46.12 RCW
10 to read as follows:

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

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

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

23 (b) To the best of the knowledge of the selling dealer or new
24 security interest holder, the certificate of ownership will not be
25 received for submission to the department within twenty calendar days
26 of the date of sale of the vehicle, or if no sale is involved, within
27 twenty calendar days of the date the security agreement or contract is
28 executed.

29 (3) A person shall submit the transitional ownership record to the
30 department or to any of its agents or subagents. Agents and subagents
31 shall immediately electronically transmit the transitional ownership
32 records to the department. A transitional ownership document processed
33 and recorded by an agent or subagent may be subject to fees as
34 specified in RCW 46.01.140(4)(a) or (5)(b).

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

37 (a) The date of sale;

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

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

2 (d) If there are multiple security interest holders, the priorities
3 of interest if the security interest holders do not jointly hold a
4 single security interest;

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

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

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

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

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

24 NEW SECTION. **Sec. 24.** If sections 17 through 23 of this act
25 mandate an increased level of service by local governments, the local
26 government may, under RCW 43.135.060 and chapter 4.92 RCW, submit
27 claims for reimbursement by the legislature. The claims shall be
28 subject to verification by the office of financial management.

29 NEW SECTION. **Sec. 25.** The legislature finds that the license to
30 drive a motor vehicle on the public highways is suspended or revoked in
31 order to protect public safety following a driver's failure to comply
32 with the laws of this state. Over six hundred persons are killed in
33 traffic accidents in Washington annually, and more than eighty-four
34 thousand persons are injured. It is estimated that of the three
35 million four hundred thousand drivers' licenses issued to citizens of
36 Washington, more than two hundred sixty thousand are suspended or
37 revoked at any given time. Suspended drivers are more likely to be

1 involved in causing traffic accidents, including fatal accidents, than
2 properly licensed drivers, and pose a serious threat to the lives and
3 property of Washington residents. Statistics show that suspended
4 drivers are three times more likely to kill or seriously injure others
5 in the commission of traffic felony offenses than are validly licensed
6 drivers. In addition to not having a driver's license, most such
7 drivers also lack required liability insurance, increasing the
8 financial burden upon other citizens through uninsured losses and
9 higher insurance costs for validly licensed drivers. Because of the
10 threat posed by suspended drivers, all registered owners of motor
11 vehicles in Washington have a duty to not allow their vehicles to be
12 driven by a suspended driver.

13 Despite the existence of criminal penalties for driving with a
14 suspended or revoked license, an estimated seventy-five percent of
15 these drivers continue to drive anyway. Existing sanctions are not
16 sufficient to deter or prevent persons with a suspended or revoked
17 license from driving. It is common for suspended drivers to resume
18 driving immediately after being stopped, cited, and released by a
19 police officer and to continue to drive while a criminal prosecution
20 for suspended driving is pending. More than half of all suspended
21 drivers charged with the crime of driving while suspended or revoked
22 fail to appear for court hearings. Vehicle impoundment will provide an
23 immediate consequence which will increase deterrence and reduce
24 unlawful driving by preventing a suspended driver access to that
25 vehicle. Vehicle impoundment will also provide an appropriate measure
26 of accountability for registered owners who permit suspended drivers to
27 drive their vehicles. Impoundment of vehicles driven by suspended
28 drivers has been shown to reduce future driving while suspended or
29 revoked offenses for up to two years afterwards, and the recidivism
30 rate for drivers whose cars were not impounded was one hundred percent
31 higher than for drivers whose cars were impounded. In order to
32 adequately protect public safety and to enforce the state's driver
33 licensing laws, it is necessary to authorize the impoundment of any
34 vehicle when it is found to be operated by a driver with a suspended or
35 revoked license, and to provide in certain circumstances for the
36 forfeiture of such vehicles where the owner continues to drive despite
37 having been previously convicted of the crime of driving with a
38 suspended or revoked license in violation of RCW 46.20.342 and
39 46.20.420. The impoundment or forfeiture of a vehicle operated in

1 violation of RCW 46.20.342 or 46.20.420 is intended to be a civil in
2 rem action against the vehicle in order to remove it from the public
3 highways and reduce the risk posed to traffic safety by a vehicle
4 accessible to a driver who is reasonably believed to have violated
5 these laws.

6 NEW SECTION. **Sec. 26.** A new section is added to chapter 46.20 RCW
7 to read as follows:

8 (1) Notwithstanding RCW 46.55.113, whenever a motor vehicle is
9 found to be operated by a person with a suspended or revoked driver's
10 license or nonresident driving privileges, or while in a suspended or
11 revoked status in violation of RCW 46.20.342 or 46.20.420, the vehicle
12 is subject to impoundment, pursuant to applicable local ordinance or
13 state agency rule, at the direction of a law enforcement officer.

14 (2) If a vehicle is impounded under this section because the
15 operator is in violation of RCW 46.20.342(1)(c), the vehicle shall not
16 be released until a person eligible to redeem it under RCW
17 46.55.120(1)(a) satisfies the requirements of RCW 46.55.120(1)(b),
18 including paying all towing, removal, and storage fees, notwithstanding
19 the fact that the hold was ordered by a government agency. However, if
20 the department's records show that the operator has been convicted of
21 a violation of RCW 46.20.342 or a similar local ordinance within the
22 past five years, the vehicle may be held for up to fifteen days at the
23 written direction of the agency ordering the vehicle impounded.

24 (3) If a vehicle is impounded under this section because the
25 operator is in violation of RCW 46.20.342(1) (a) or (b), the vehicle
26 may be held for up to fifteen days and must not be released until a
27 person eligible to redeem it under RCW 46.55.120(1)(a) satisfies the
28 requirements of RCW 46.55.120(1)(b), including paying all towing,
29 removal, and storage fees, notwithstanding the fact that the hold was
30 ordered by a government agency. However, if the department's records
31 show that the operator has been convicted of a violation of RCW
32 46.20.342(1) (a) or (b) or a similar local ordinance within the past
33 five years and the operator has a financial interest in the vehicle,
34 the vehicle is subject to forfeiture unless an applicable state agency
35 rule or local ordinance prohibits forfeiture on the basis of economic
36 or personal hardship to the spouse of the operator, taking into
37 consideration public safety factors, including the operator's criminal
38 history and driving record. If the vehicle is forfeited, then the

1 forfeiting agency shall pay all the impoundment, towing, and storage
2 fees for the vehicle and shall be entitled to recover those fees from
3 the operator of the forfeited vehicle, including any attorneys' fees,
4 costs of collection, and interest at the statutory rate for judgment
5 interest from the date of payment by the forfeiting agency of such
6 fees.

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

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

30 (6) If a person notifies the seizing law enforcement agency in
31 writing of the person's claim of ownership or right to possession of
32 the seized vehicle within forty-five days of the seizure, the law
33 enforcement agency shall give the person or persons a reasonable
34 opportunity to be heard as to the claim or right. At the hearing, if
35 the seizing agency proves by a preponderance of the evidence that the
36 vehicle was operated by a person in violation of RCW 46.61.502 or
37 46.61.504, and that person has a prior offense as defined by RCW
38 46.61.5055(9), and has an ownership interest in the vehicle, then the
39 vehicle shall be forfeited. The hearing shall be before the chief law

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

27 (7) When a vehicle is forfeited under this chapter the seizing law
28 enforcement agency may sell the vehicle, retain it for official use, or
29 upon application by a law enforcement agency of this state release the
30 vehicle to that agency for the exclusive use of enforcing this title;
31 provided, however, that the agency shall first satisfy any bona fide
32 security interest to which the vehicle is subject and provided further
33 that where the ownership interest subject to forfeiture is bona fide
34 community property, the value of the undivided community property
35 interest of the spouse who was not operating the vehicle in violation
36 of RCW 46.61.502 or 46.61.504 shall not be forfeited nor subject to
37 reduction for towing, removal, or storage charges associated with the
38 forfeiture action. The value of the undivided community property
39 interest not subject to forfeiture or reduction is one-half of the

1 value of the vehicle as defined in subsection (14) of this section
2 after deducting the cost of satisfying any bona fide security interest.

3 (8) When a vehicle is forfeited, the seizing agency shall keep a
4 record indicating the identity of the prior owner, if known, a
5 description of the vehicle, the disposition of the vehicle, the value
6 of the vehicle at the time of seizure, and the amount of proceeds
7 realized from disposition of the vehicle.

8 (9) Each seizing agency shall retain records of forfeited vehicles
9 for at least seven years.

10 (10) Each seizing agency shall file a report including a copy of
11 the records of forfeited vehicles with the state treasurer each
12 calendar quarter.

13 (11) The quarterly report need not include a record of a forfeited
14 vehicle that is still being held for use as evidence during the
15 investigation or prosecution of a case or during the appeal from a
16 conviction.

17 (12) By January 31st of each year, each seizing agency shall remit
18 to the state treasurer an amount equal to ten percent of the net
19 proceeds of vehicles forfeited during the preceding calendar year.
20 Money remitted shall be deposited in the public safety and education
21 account.

22 (13) The net proceeds of a forfeited vehicle is the value of the
23 forfeitable interest in the vehicle after deducting the cost of
24 satisfying a bona fide community property interest and security
25 interest to which the vehicle is subject at the time of seizure and all
26 towing, removal, and storage fees; and in the case of a sold vehicle,
27 after deducting the cost of sale, including reasonable fees or
28 commissions paid to independent selling agents.

29 (14) The value of a sold forfeited vehicle is the sale price. The
30 value of a retained forfeited vehicle is the fair market value of the
31 vehicle at the time of seizure, determined when possible by reference
32 to an applicable commonly used index, such as the index used by the
33 department of licensing. A seizing agency may, but need not, use an
34 independent qualified appraiser to determine the value of retained
35 vehicles. If an appraiser is used, the value of the vehicle appraised
36 is net of the cost of the appraisal.

37 (15) Notwithstanding RCW 46.52.120(2), in any hearing under RCW
38 46.55.120 to contest the validity of the impoundment or under this
39 section to contest the validity of the forfeiture, an abstract of the

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

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

11 **Sec. 27.** RCW 46.55.105 and 1995 c 219 s 4 are each amended to read
12 as follows:

13 (1) The abandonment of any vehicle creates a prima facie
14 presumption that the last registered owner of record is responsible for
15 the abandonment and is liable for costs incurred in removing, storing,
16 and disposing of the abandoned vehicle, less amounts realized at
17 auction.

18 (2) If an unauthorized vehicle is found abandoned under subsection
19 (1) of this section and removed at the direction of law enforcement,
20 the last registered owner of record is guilty of a traffic infraction,
21 unless the vehicle is redeemed as provided in RCW 46.55.120. In
22 addition to any other monetary penalty payable under chapter 46.63 RCW,
23 the court shall not consider all monetary penalties as having been paid
24 until the court is satisfied that the person found to have committed
25 the infraction has made restitution in the amount of the deficiency
26 remaining after disposal of the vehicle under RCW 46.55.140.

27 (3) A vehicle theft report filed with a law enforcement agency
28 relieves the last registered owner of liability under subsection (2) of
29 this section for failure to redeem the vehicle. However, the last
30 registered owner remains liable for the costs incurred in removing,
31 storing, and disposing of the abandoned vehicle under subsection (1) of
32 this section. Nothing in this section limits in any way the registered
33 owner's rights in a civil action or as restitution in a criminal action
34 against a person responsible for the theft of the vehicle.

35 (4) Properly filing a report of sale or transfer regarding the
36 vehicle involved in accordance with RCW 46.12.101(1) ((~~or a vehicle~~
37 ~~theft report filed with a law enforcement agency~~)) relieves the last
38 registered owner of liability under subsections (1) and (2) of this

1 section. If the date of sale as indicated on the report of sale is on
2 or before the date of impoundment, the buyer identified on the latest
3 properly filed report of sale with the department is assumed liable for
4 the costs incurred in removing, storing, and disposing of the abandoned
5 vehicle, less amounts realized at auction. If the date of sale is
6 after the date of impoundment, the previous registered owner is assumed
7 to be liable for such costs. A licensed vehicle dealer is not liable
8 under subsections (1) and (2) of this section if the dealer, as
9 transferee or assignee of the last registered owner of the vehicle
10 involved, has complied with the requirements of RCW 46.70.122 upon
11 selling or otherwise disposing of the vehicle, or if the dealer has
12 timely filed a transitional ownership record or report of sale under
13 section 23 of this act. In that case the person to whom the licensed
14 vehicle dealer has sold or transferred the vehicle is assumed liable
15 for the costs incurred in removing, storing, and disposing of the
16 abandoned vehicle, less amounts realized at auction.

17 ~~((4))~~ (5) For the purposes of reporting notices of traffic
18 infraction to the department under RCW 46.20.270 and 46.52.100, and for
19 purposes of reporting notices of failure to appear, respond, or comply
20 regarding a notice of traffic infraction to the department under RCW
21 46.63.070(5), a traffic infraction under subsection (2) of this section
22 is not considered to be a standing, stopping, or parking violation.

23 ~~((5))~~ (6) A notice of infraction for a violation of this section
24 may be filed with a court of limited jurisdiction organized under Title
25 3, 35, or 35A RCW, or with a violations bureau subject to the court's
26 jurisdiction.

27 **Sec. 28.** RCW 46.55.110 and 1995 c 360 s 6 are each amended to read
28 as follows:

29 (1) When an unauthorized vehicle is impounded, the impounding
30 towing operator shall notify the legal and registered owners of the
31 impoundment of the unauthorized vehicle and the owners of any other
32 items of personal property registered or titled with the department.
33 The notification shall be sent by first-class mail within twenty-four
34 hours after the impoundment to the last known registered and legal
35 owners of the vehicle, and the owners of any other items of personal
36 property registered or titled with the department, as provided by the
37 law enforcement agency, and shall inform the owners of the identity of
38 the person or agency authorizing the impound. The notification shall

1 include the name of the impounding tow firm, its address, and telephone
2 number. The notice shall also include the location, time of the
3 impound, and by whose authority the vehicle was impounded. The notice
4 shall also include the written notice of the right of redemption and
5 opportunity for a hearing to contest the validity of the impoundment
6 pursuant to RCW 46.55.120.

7 (2) In the case of an abandoned vehicle, or other item of personal
8 property registered or titled with the department, within twenty-four
9 hours after receiving information on the owners from the department
10 through the abandoned vehicle report, the tow truck operator shall send
11 by certified mail, with return receipt requested, a notice of custody
12 and sale to the legal and registered owners.

13 (3) If the date on which a notice required by subsection (2) of
14 this section is to be mailed falls upon a Saturday, Sunday, or a postal
15 holiday, the notice may be mailed on the next day that is neither a
16 Saturday, Sunday, nor a postal holiday.

17 (4) No notices need be sent to the legal or registered owners of an
18 impounded vehicle or other item of personal property registered or
19 titled with the department, if the vehicle or personal property has
20 been redeemed.

21 **Sec. 29.** RCW 46.55.130 and 1989 c 111 s 12 are each amended to
22 read as follows:

23 (1) If, after the expiration of fifteen days from the date of
24 mailing of notice of custody and sale required in RCW 46.55.110(2) to
25 the registered and legal owners, the vehicle remains unclaimed and has
26 not been listed as a stolen vehicle, then the registered tow truck
27 operator having custody of the vehicle shall conduct a sale of the
28 vehicle at public auction after having first published a notice of the
29 date, place, and time of the auction in a newspaper of general
30 circulation in the county in which the vehicle is located not less than
31 three days and no more than ten days before the date of the auction.
32 The notice shall contain a description of the vehicle including the
33 make, model, year, and license number and a notification that a three-
34 hour public viewing period will be available before the auction. The
35 auction shall be held during daylight hours of a normal business day.

36 (2) The following procedures are required in any public auction of
37 such abandoned vehicles:

1 (a) The auction shall be held in such a manner that all persons
2 present are given an equal time and opportunity to bid;

3 (b) All bidders must be present at the time of auction unless they
4 have submitted to the registered tow truck operator, who may or may not
5 choose to use the preauction bid method, a written bid on a specific
6 vehicle. Written bids may be submitted up to five days before the
7 auction and shall clearly state which vehicle is being bid upon, the
8 amount of the bid, and who is submitting the bid;

9 (c) The open bid process, including all written bids, shall be used
10 so that everyone knows the dollar value that must be exceeded;

11 (d) The highest two bids received shall be recorded in written form
12 and shall include the name, address, and telephone number of each such
13 bidder;

14 (e) In case the high bidder defaults, the next bidder has the right
15 to purchase the vehicle for the amount of his or her bid;

16 (f) The successful bidder shall apply for title within fifteen
17 days;

18 (g) The registered tow truck operator shall post a copy of the
19 auction procedure at the bidding site. If the bidding site is
20 different from the licensed office location, the operator shall post a
21 clearly visible sign at the office location that describes in detail
22 where the auction will be held. At the bidding site a copy of the
23 newspaper advertisement that lists the vehicles for sale shall be
24 posted;

25 (h) All surplus moneys derived from the auction after satisfaction
26 of the registered tow truck operator's lien shall be remitted within
27 thirty days to the department for deposit in the state motor vehicle
28 fund. A report identifying the vehicles resulting in any surplus shall
29 accompany the remitted funds. If the director subsequently receives a
30 valid claim from the registered vehicle owner of record as determined
31 by the department within one year from the date of the auction, the
32 surplus moneys shall be remitted to such owner;

33 (i) If an operator receives no bid, or if the operator is the
34 successful bidder at auction, the operator shall, within (~~thirty~~)
35 forty-five days sell the vehicle to a licensed vehicle wrecker, hulk
36 hauler, or scrap processor by use of the abandoned vehicle report-
37 affidavit of sale, or the operator shall apply for title to the
38 vehicle.

1 (3) In no case may an operator hold a vehicle for longer than
2 ninety days without holding an auction on the vehicle, except for
3 vehicles that are under a police or judicial hold.

4 (4)(a) In no case may the accumulation of storage charges exceed
5 fifteen days from the date of receipt of the information by the
6 operator from the department as provided by RCW 46.55.110(2).

7 (b) The failure of the registered tow truck operator to comply with
8 the time limits provided in this chapter limits the accumulation of
9 storage charges to five days except where delay is unavoidable.
10 Providing incorrect or incomplete identifying information to the
11 department in the abandoned vehicle report shall be considered a
12 failure to comply with these time limits if correct information is
13 available.

14 NEW SECTION. **Sec. 30.** A new section is added to chapter 46.55 RCW
15 to read as follows:

16 In any administrative or judicial proceeding involving a forfeiture
17 of a vehicle under section 26 of this act, the chief law enforcement
18 officer or court shall provide for the protection of a bona fide
19 community property interest in the vehicle of a person other than the
20 person whose operation of the vehicle with a suspended or revoked
21 license led to the forfeiture.

22 **Sec. 31.** RCW 46.55.010 and 1994 c 176 s 1 are each amended to read
23 as follows:

24 The definitions set forth in this section apply throughout this
25 chapter:

26 (1) "Abandoned vehicle" means a vehicle that a registered tow truck
27 operator has impounded and held in the operator's possession for
28 (~~ninety-six~~) one hundred twenty consecutive hours.

29 (2) "Abandoned vehicle report" means the document prescribed by the
30 state that the towing operator forwards to the department after a
31 vehicle has become abandoned.

32 (3) "Impound" means to take and hold a vehicle in legal custody.
33 There are two types of impounds«public and private.

34 (a) "Public impound" means that the vehicle has been impounded at
35 the direction of a law enforcement officer or by a public official
36 having jurisdiction over the public property upon which the vehicle was
37 located.

1 (b) "Private impound" means that the vehicle has been impounded at
2 the direction of a person having control or possession of the private
3 property upon which the vehicle was located.

4 (4) "Junk vehicle" means a vehicle certified under RCW 46.55.230 as
5 meeting at least three of the following requirements:

6 (a) Is three years old or older;

7 (b) Is extensively damaged, such damage including but not limited
8 to any of the following: A broken window or windshield, or missing
9 wheels, tires, motor, or transmission;

10 (c) Is apparently inoperable;

11 (d) Has an approximate fair market value equal only to the
12 approximate value of the scrap in it.

13 (5) "Master log" means the document or an electronic facsimile
14 prescribed by the department and the Washington state patrol in which
15 an operator records transactions involving impounded vehicles.

16 (6) "Registered tow truck operator" or "operator" means any person
17 who engages in the impounding, transporting, or storage of unauthorized
18 vehicles or the disposal of abandoned vehicles.

19 (7) "Residential property" means property that has no more than
20 four living units located on it.

21 (8) "Tow truck" means a motor vehicle that is equipped for and used
22 in the business of towing vehicles with equipment as approved by the
23 state patrol.

24 (9) "Tow truck number" means the number issued by the department to
25 tow trucks used by a registered tow truck operator in the state of
26 Washington.

27 (10) "Tow truck permit" means the permit issued annually by the
28 department that has the classification of service the tow truck may
29 provide stamped upon it.

30 (11) "Tow truck service" means the transporting upon the public
31 streets and highways of this state of vehicles, together with personal
32 effects and cargo, by a tow truck of a registered operator.

33 (12) "Unauthorized vehicle" means a vehicle that is subject to
34 impoundment after being left unattended in one of the following public
35 or private locations for the indicated period of time:

Subject to removal after:

- (a) Public locations:
 - (i) Constituting an accident or a traffic hazard as defined in RCW 46.55.113 Immediately
 - (ii) On a highway and tagged as described in RCW 46.55.085 24 hours
 - (iii) In a publicly owned or controlled parking facility, properly posted under RCW 46.55.070 Immediately
- (b) Private locations:
 - (i) On residential property Immediately
 - (ii) On private, nonresidential property, properly posted under RCW 46.55.070 Immediately
 - (iii) On private, nonresidential property, not posted 24 hours

Sec. 32. RCW 46.55.100 and 1995 c 360 s 5 are each amended to read as follows:

(1) At the time of impoundment the registered tow truck operator providing the towing service shall give immediate notification, by telephone or radio, to a law enforcement agency having jurisdiction who shall maintain a log of such reports. A law enforcement agency, or a private communication center acting on behalf of a law enforcement agency, shall within six to twelve hours of the impoundment, provide to a requesting operator the name and address of the legal and registered owners of the vehicle, and the registered owner of any personal property registered or titled with the department that is attached to or contained in or on the impounded vehicle, the vehicle identification number, and any other necessary, pertinent information. The initial notice of impoundment shall be followed by a written or electronic facsimile notice within twenty-four hours. In the case of a vehicle from another state, time requirements of this subsection do not apply until the requesting law enforcement agency in this state receives the information.

(2) The operator shall immediately send an abandoned vehicle report to the department for any vehicle, and for any items of personal property registered or titled with the department, that are in the operator's possession after the (~~ninety-six~~) one hundred twenty hour abandonment period. Such report need not be sent when the impoundment

1 is pursuant to a writ, court order, or police hold. The owner
2 notification and abandonment process shall be initiated by the
3 registered tow truck operator immediately following notification by a
4 court or law enforcement officer that the writ, court order, or police
5 hold is no longer in effect.

6 (3) Following the submittal of an abandoned vehicle report, the
7 department shall provide the registered tow truck operator with owner
8 information within seventy-two hours.

9 (4) Within ((fifteen)) fourteen days of the sale of an abandoned
10 vehicle at public auction, the towing operator shall send a copy of the
11 abandoned vehicle report showing the disposition of the abandoned
12 vehicle and any other items of personal property registered or titled
13 with the department to the crime information center of the Washington
14 state patrol.

15 (5) If the operator sends an abandoned vehicle report to the
16 department and the department finds no owner information, an operator
17 may proceed with an inspection of the vehicle and any other items of
18 personal property registered or titled with the department to determine
19 whether owner identification is within the vehicle.

20 (6) If the operator finds no owner identification, the operator
21 shall immediately notify the appropriate law enforcement agency, which
22 shall search the vehicle and any other items of personal property
23 registered or titled with the department for the vehicle identification
24 number or other appropriate identification numbers and check the
25 necessary records to determine the vehicle's or other property's
26 owners.

27 NEW SECTION. **Sec. 33.** RCW 46.20.344 and 1965 ex.s. c 121 s 45 are
28 each repealed.

29 **Sec. 34.** RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are
30 each reenacted and amended to read as follows:

31 (1) A person who is convicted of a violation of RCW 46.61.502 or
32 46.61.504 and who has no prior offense within ((five)) seven years
33 shall be punished as follows:

34 (a) In the case of a person whose alcohol concentration was less
35 than 0.15, or for whom for reasons other than the person's refusal to
36 take a test offered pursuant to RCW 46.20.308 there is no test result
37 indicating the person's alcohol concentration:

1 (i) By imprisonment for not less than one day nor more than one
2 year(~~((. Twenty four consecutive hours of the imprisonment))~~) and thirty
3 days of electronic home monitoring. The offender shall pay for the
4 cost of the electronic monitoring. The county or municipality where
5 the penalty is being imposed shall determine the cost. The court may
6 also require the offender's electronic home monitoring device include
7 an alcohol detection breathalyzer, and may restrict the amount of
8 alcohol the offender may consume during the time the offender is on
9 electronic home monitoring. One day of imprisonment and thirty days of
10 electronic home monitoring may not be suspended or deferred unless the
11 court finds that the imposition of this mandatory minimum sentence
12 would impose a substantial risk to the offender's physical or mental
13 well-being. Whenever the mandatory minimum sentence is suspended or
14 deferred, the court shall state in writing the reason for granting the
15 suspension or deferral and the facts upon which the suspension or
16 deferral is based; and

17 (ii) By a fine of not less than (~~three~~) five hundred (~~fifty~~)
18 dollars nor more than five thousand dollars. (~~Three~~) Five hundred
19 (~~fifty~~) dollars of the fine may not be suspended or deferred unless
20 the court finds the offender to be indigent; and

21 (iii) By suspension of the offender's license or permit to drive,
22 or suspension of any nonresident privilege to drive, for a period of
23 ninety days. The period of license, permit, or privilege suspension
24 may not be suspended. The court shall notify the department of
25 licensing of the conviction, and upon receiving notification of the
26 conviction the department shall suspend the offender's license, permit,
27 or privilege; or

28 (b) In the case of a person whose alcohol concentration was at
29 least 0.15, or for whom by reason of the person's refusal to take a
30 test offered pursuant to RCW 46.20.308 there is no test result
31 indicating the person's alcohol concentration:

32 (i) By imprisonment for not less than two days nor more than one
33 year(~~((. Two consecutive days of the imprisonment))~~) and sixty days of
34 electronic home monitoring. The offender shall pay for the cost of the
35 electronic monitoring. The county or municipality where the penalty is
36 being imposed shall determine the cost. The court may also require the
37 offender's electronic home monitoring device include an alcohol
38 detection breathalyzer, and may restrict the amount of alcohol the
39 offender may consume during the time the offender is on electronic home

1 monitoring. Two days of imprisonment and sixty days of electronic home
2 monitoring may not be suspended or deferred unless the court finds that
3 the imposition of this mandatory minimum sentence would impose a
4 substantial risk to the offender's physical or mental well-being.
5 Whenever the mandatory minimum sentence is suspended or deferred, the
6 court shall state in writing the reason for granting the suspension or
7 deferral and the facts upon which the suspension or deferral is based;
8 and

9 (ii) By a fine of not less than ~~((five))~~ seven hundred fifty
10 dollars nor more than five thousand dollars. ~~((Five))~~ Seven hundred
11 fifty dollars of the fine may not be suspended or deferred unless the
12 court finds the offender to be indigent; and

13 (iii) By revocation of the offender's license or permit to drive,
14 or suspension of any nonresident privilege to drive, for a period of
15 one year. The period of license, permit, or privilege suspension may
16 not be suspended. The court shall notify the department of licensing
17 of the conviction, and upon receiving notification of the conviction
18 the department shall suspend the offender's license, permit, or
19 privilege; and

20 (iv) By a court-ordered restriction under RCW 46.20.720.

21 (2) A person who is convicted of a violation of RCW 46.61.502 or
22 46.61.504 and who has one prior offense within ~~((five))~~ seven years
23 shall be punished as follows:

24 (a) In the case of a person whose alcohol concentration was less
25 than 0.15, or for whom for reasons other than the person's refusal to
26 take a test offered pursuant to RCW 46.20.308 there is no test result
27 indicating the person's alcohol concentration:

28 (i) By imprisonment for not less than thirty days nor more than one
29 year~~((Thirty days of the imprisonment))~~ and sixty days of electronic
30 home monitoring. The offender shall pay for the cost of the electronic
31 monitoring. The county or municipality where the penalty is being
32 imposed shall determine the cost. The court may also require the
33 offender's electronic home monitoring device include an alcohol
34 detection breathalyzer, and may restrict the amount of alcohol the
35 offender may consume during the time the offender is on electronic home
36 monitoring. Thirty days of imprisonment and sixty days of electronic
37 home monitoring may not be suspended or deferred unless the court finds
38 that the imposition of this mandatory minimum sentence would impose a
39 substantial risk to the offender's physical or mental well-being.

1 Whenever the mandatory minimum sentence is suspended or deferred, the
2 court shall state in writing the reason for granting the suspension or
3 deferral and the facts upon which the suspension or deferral is based;
4 and

5 (ii) By a fine of not less than (~~five hundred~~) one thousand
6 dollars nor more than five thousand dollars. (~~Five hundred~~) One
7 thousand dollars of the fine may not be suspended or deferred unless
8 the court finds the offender to be indigent; and

9 (iii) By revocation of the offender's license or permit to drive,
10 or suspension of any nonresident privilege to drive, for a period of
11 two years. The period of license, permit, or privilege revocation may
12 not be suspended. The court shall notify the department of licensing
13 of the conviction, and upon receiving notification of the conviction
14 the department shall revoke the offender's license, permit, or
15 privilege; and

16 (iv) By a court-ordered restriction under RCW 46.20.720; or

17 (b) In the case of a person whose alcohol concentration was at
18 least 0.15, or for whom by reason of the person's refusal to take a
19 test offered pursuant to RCW 46.20.308 there is no test result
20 indicating the person's alcohol concentration:

21 (i) By imprisonment for not less than forty-five days nor more than
22 one year(~~. Forty five days of the imprisonment~~) and ninety days of
23 electronic home monitoring. The offender shall pay for the cost of the
24 electronic monitoring. The county or municipality where the penalty is
25 being imposed shall determine the cost. The court may also require the
26 offender's electronic home monitoring device include an alcohol
27 detection breathalyzer, and may restrict the amount of alcohol the
28 offender may consume during the time the offender is on electronic home
29 monitoring. Forty-five days of imprisonment and ninety days of
30 electronic home monitoring may not be suspended or deferred unless the
31 court finds that the imposition of this mandatory minimum sentence
32 would impose a substantial risk to the offender's physical or mental
33 well-being. Whenever the mandatory minimum sentence is suspended or
34 deferred, the court shall state in writing the reason for granting the
35 suspension or deferral and the facts upon which the suspension or
36 deferral is based; and

37 (ii) By a fine of not less than (~~seven~~) one thousand five hundred
38 (~~fifty~~) dollars nor more than five thousand dollars. (~~Seven~~) One
39 thousand five hundred (~~fifty~~) dollars of the fine may not be

1 suspended or deferred unless the court finds the offender to be
2 indigent; and

3 (iii) By revocation of the offender's license or permit to drive,
4 or suspension of any nonresident privilege to drive, for a period of
5 nine hundred days. The period of license, permit, or privilege
6 revocation may not be suspended. The court shall notify the department
7 of licensing of the conviction, and upon receiving notification of the
8 conviction the department shall revoke the offender's license, permit,
9 or privilege; and

10 (iv) By a court-ordered restriction under RCW 46.20.720.

11 (3) A person who is convicted of a violation of RCW 46.61.502 or
12 46.61.504 and who has two or more prior offenses (~~within five years~~)
13 shall be punished as follows:

14 (a) (~~In the case of a person whose alcohol concentration was less~~
15 ~~than 0.15, or for whom for reasons other than the person's refusal to~~
16 ~~take a test offered pursuant to RCW 46.20.308 there is no test result~~
17 ~~indicating the person's alcohol concentration:~~

18 ~~(i))~~ By imprisonment for not less than ninety days nor more than
19 one year(~~. Ninety days of the imprisonment~~) and one hundred twenty
20 days of electronic home monitoring. The offender shall pay for the
21 cost of the electronic monitoring. The county or municipality where
22 the penalty is being imposed shall determine the cost. The court may
23 also require the offender's electronic home monitoring device include
24 an alcohol detection breathalyzer, and may restrict the amount of
25 alcohol the offender may consume during the time the offender is on
26 electronic home monitoring. Ninety days of imprisonment and one
27 hundred twenty days of electronic home monitoring may not be suspended
28 or deferred unless the court finds that the imposition of this
29 mandatory minimum sentence would impose a substantial risk to the
30 offender's physical or mental well-being. Whenever the mandatory
31 minimum sentence is suspended or deferred, the court shall state in
32 writing the reason for granting the suspension or deferral and the
33 facts upon which the suspension or deferral is based; and

34 (~~(ii))~~ (b) By a fine of not less than (~~one~~) two thousand
35 dollars nor more than five thousand dollars. (~~One~~) Two thousand
36 dollars of the fine may not be suspended or deferred unless the court
37 finds the offender to be indigent; and

38 (~~(iii))~~ (c) By permanent revocation of the offender's license or
39 permit to drive, or (~~suspension~~) permanent revocation of any

1 nonresident privilege to drive(~~(, for a period of three years))~~). The
2 (~~period~~) permanent revocation of a license, permit, or privilege
3 (~~revocation~~) may not be suspended. The court shall notify the
4 department of licensing of the conviction, and upon receiving
5 notification of the conviction the department shall permanently revoke
6 the offender's license, permit, or privilege(~~(; or~~

7 ~~(b) In the case of a person whose alcohol concentration was at~~
8 ~~least 0.15, or for whom by reason of the person's refusal to take a~~
9 ~~test offered pursuant to RCW 46.20.308 there is no test result~~
10 ~~indicating the person's alcohol concentration:~~

11 ~~(i) By imprisonment for not less than one hundred twenty days nor~~
12 ~~more than one year. One hundred twenty days of the imprisonment may~~
13 ~~not be suspended or deferred unless the court finds that the imposition~~
14 ~~of this mandatory minimum sentence would impose a substantial risk to~~
15 ~~the offender's physical or mental well-being. Whenever the mandatory~~
16 ~~minimum sentence is suspended or deferred, the court shall state in~~
17 ~~writing the reason for granting the suspension or deferral and the~~
18 ~~facts upon which the suspension or deferral is based; and~~

19 ~~(ii) By a fine of not less than one thousand five hundred dollars~~
20 ~~nor more than five thousand dollars. One thousand five hundred dollars~~
21 ~~of the fine may not be suspended or deferred unless the court finds the~~
22 ~~offender to be indigent; and~~

23 ~~(iii) By revocation of the offender's license or permit to drive,~~
24 ~~or suspension of any nonresident privilege to drive, for a period of~~
25 ~~four years. The period of license, permit, or privilege revocation may~~
26 ~~not be suspended. The court shall notify the department of licensing~~
27 ~~of the conviction, and upon receiving notification of the conviction~~
28 ~~the department shall revoke the offender's license, permit, or~~
29 ~~privilege)); and~~

30 (d) By a court-ordered restriction under RCW 46.20.720.

31 (4) Any minimum nonsuspendable and nondeferrable jail sentence
32 required by this section shall be doubled for any offender convicted of
33 a violation of RCW 46.61.502 or 46.61.504 who committed the offense
34 with a person under the age of ten in the motor vehicle.

35 (5) In exercising its discretion in setting penalties within the
36 limits allowed by this section, the court shall particularly consider
37 whether the person's driving at the time of the offense was responsible
38 for injury or damage to another or another's property.

1 (~~(5)~~) (6) An offender punishable under this section is subject to
2 the alcohol assessment and treatment provisions of RCW 46.61.5056.

3 (~~(6)~~) (7) After expiration of any period of suspension or
4 revocation of the offender's license, permit, or privilege to drive
5 required by this section, the department shall place the offender's
6 driving privilege in probationary status pursuant to RCW 46.20.355.

7 (~~(7)~~) (8)(a) In addition to any nonsuspendable and nondeferrable
8 jail sentence required by this section, whenever the court imposes less
9 than one year in jail, the court shall also suspend but shall not defer
10 a period of confinement for a period not exceeding two years. The
11 court shall impose conditions of probation that include: (i) Not
12 driving a motor vehicle within this state without a valid license to
13 drive and proof of financial responsibility for the future; (ii) not
14 driving a motor vehicle within this state while having an alcohol
15 concentration of 0.08 or more within two hours after driving; and (iii)
16 not refusing to submit to a test of his or her breath or blood to
17 determine alcohol concentration upon request of a law enforcement
18 officer who has reasonable grounds to believe the person was driving or
19 was in actual physical control of a motor vehicle within this state
20 while under the influence of intoxicating liquor. The court may impose
21 conditions of probation that include nonrepetition, installation of an
22 ignition interlock or other biological or technical device on the
23 probationer's motor vehicle, alcohol or drug treatment, supervised
24 probation, or other conditions that may be appropriate. The sentence
25 may be imposed in whole or in part upon violation of a condition of
26 probation during the suspension period.

27 (b) For each violation of mandatory conditions of probation under
28 (a)(i) and (ii) or (a)(i) and (iii) of this subsection, the court shall
29 order the convicted person to be confined for thirty days, which shall
30 not be suspended or deferred.

31 (c) For each incident involving a violation of a mandatory
32 condition of probation imposed under this subsection, the license,
33 permit, or privilege to drive of the person shall be suspended by the
34 court for thirty days or, if such license, permit, or privilege to
35 drive already is suspended, revoked, or denied at the time the finding
36 of probation violation is made, the suspension, revocation, or denial
37 then in effect shall be extended by thirty days. The court shall
38 notify the department of any suspension, revocation, or denial or any

1 extension of a suspension, revocation, or denial imposed under this
2 subsection.

3 ~~((8))~~ (9) For purposes of this section:

4 (a) "Electronic home monitoring" shall not be considered
5 confinement as defined in RCW 9.94A.030;

6 (b) "Permanent revocation" means revocation for the lifetime of the
7 offender;

8 (c) A "prior offense" means any of the following:

9 (i) A conviction for a violation of RCW 46.61.502 or an equivalent
10 local ordinance;

11 (ii) A conviction for a violation of RCW 46.61.504 or an equivalent
12 local ordinance;

13 (iii) A conviction for a violation of RCW 46.61.520 committed while
14 under the influence of intoxicating liquor or any drug;

15 (iv) A conviction for a violation of RCW 46.61.522 committed while
16 under the influence of intoxicating liquor or any drug;

17 (v) A conviction for a violation of RCW 46.61.5249 or an equivalent
18 local ordinance, if the conviction is the result of a charge that was
19 originally filed as a violation of RCW 46.61.502 or 46.61.504, or an
20 equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

21 (vi) An out-of-state conviction for a violation that would have
22 been a violation of ~~((a))~~ (c)(i), (ii), (iii), (iv), or (v) of this
23 subsection if committed in this state;

24 (vii) A deferred prosecution under chapter 10.05 RCW granted in a
25 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
26 equivalent local ordinance; or

27 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
28 prosecution for a violation of RCW 46.61.5249, or an equivalent local
29 ordinance, if the charge under which the deferred prosecution was
30 granted was originally filed as a violation of RCW 46.61.502 or
31 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
32 46.61.522~~((-))~~; and

33 ~~((b))~~ (d) "Within ~~((five))~~ seven years" means that the arrest for
34 a prior offense occurred within ~~((five))~~ seven years of the arrest for
35 the current offense.

36 NEW SECTION. Sec. 35. A new section is added to chapter 46.61 RCW
37 to read as follows:

1 A person who drives a vehicle within this state after his or her
2 license has been permanently revoked pursuant to RCW 46.61.5055 is
3 guilty of a gross misdemeanor and shall be punished by a fine of not
4 more than five thousand dollars and by imprisonment for one year. A
5 second or subsequent violation of this section is a class C felony and
6 shall be punished by a fine of not more than ten thousand dollars and
7 by imprisonment for seven years. Periods of imprisonment to be imposed
8 under this section for either gross misdemeanor or felony violations
9 are mandatory and may not be suspended or deferred. Sentences imposed
10 for felony violations are not subject to the earned early release
11 provisions of the sentencing reform act.

12 NEW SECTION. **Sec. 36.** A new section is added to chapter 46.20 RCW
13 to read as follows:

14 At the expiration of seven years from the date of any conviction in
15 which a person was punished by a permanent license revocation under RCW
16 46.61.5055 (2) or (3), the person may petition the department for
17 restoration of his or her privilege to operate a motor vehicle in this
18 state. Upon receipt of the petition, and for good cause shown, the
19 department of licensing shall restore to the person the privilege to
20 operate a motor vehicle in this state upon such terms and conditions as
21 the department of licensing prescribes, subject to the provisions of
22 chapter 46.29 RCW and such other provisions of law relating to the
23 issuance or revocation of drivers' licenses.

24 "Good cause shown" means that the individual submitting the
25 petition presents sufficient evidence of permanent rehabilitation
26 through affidavits from treatment providers, doctors, and others. The
27 petitioner has the burden of demonstrating by clear and convincing
28 evidence that he or she has spent the previous seven years in a state
29 of sobriety.

30 NEW SECTION. **Sec. 37.** The Washington traffic safety commission
31 shall conduct an electronic media campaign advertising the contents of
32 this act. However, if specific funding for the purposes of this
33 section referencing this section by bill or chapter number and section
34 number, is not provided by June 30, 1998, in an appropriation by the
35 legislature, this section is null and void.

1 NEW SECTION. **Sec. 38.** If sections 34 through 37 of this act
2 mandate an increased level of service by local governments, the local
3 government may, under RCW 43.135.060 and chapter 4.92 RCW, submit
4 claims for reimbursement by the legislature. The claims shall be
5 subject to verification by the office of financial management.

6 NEW SECTION. **Sec. 39.** Sections 40 through 42 of this act may be
7 known and cited as the Mary Johnsen Act.

8 **Sec. 40.** RCW 46.20.720 and 1997 c 229 s 8 are each amended to read
9 as follows:

10 (1) The court may order that after a period of suspension,
11 revocation, or denial of driving privileges, and for up to as long as
12 the court has jurisdiction, any person convicted of any offense
13 involving the use, consumption, or possession of alcohol while
14 operating a motor vehicle may drive only a motor vehicle equipped with
15 a functioning ignition interlock or other biological or technical
16 device.

17 (2) If a person is convicted of a violation of RCW 46.61.502 or
18 46.61.504 or an equivalent local ordinance, the court shall order that
19 after a period of suspension, revocation, or denial of driving
20 privileges, the person may drive only a motor vehicle equipped with a
21 functioning ignition interlock or other biological or technical device.

22 (3) The court shall establish a specific calibration setting at
23 which the ignition interlock or other biological or technical device
24 will prevent the motor vehicle from being started and the period of
25 time that the person shall be subject to the restriction. In the case
26 of a person under subsection (2) of this section, the period of time of
27 the restriction will be as follows:

28 (a) For a person subject to RCW 46.61.5055 (1)(b), (2), or (3) who
29 has not previously been restricted under this section, a period of not
30 less than one year;

31 (b) For a person who has previously been restricted under (a) of
32 this subsection, a period of not less than five years;

33 (c) For a person who has previously been restricted under (b) of
34 this subsection, a permanent, lifetime restriction.

35 For purposes of this section, "convicted" means being found guilty
36 of an offense or being placed on a deferred prosecution program under
37 chapter 10.05 RCW.

1 **Sec. 41.** RCW 46.20.740 and 1997 c 229 s 10 are each amended to
2 read as follows:

3 (1) The department shall attach or imprint a notation on the
4 driver's license of any person restricted under RCW 46.20.720 or
5 46.61.5055 stating that the person may operate only a motor vehicle
6 equipped with an ignition interlock or other biological or technical
7 device.

8 (2) It is a misdemeanor for a person with such a notation on his or
9 her driver's license to operate a motor vehicle that is not so
10 equipped. For the first such conviction, the minimum sentence is
11 thirty days in jail. For a second offense, the minimum sentence is
12 sixty days in jail. For a third or subsequent offense, the minimum
13 sentence is ninety days in jail.

14 NEW SECTION. **Sec. 42.** If section 40 or 41 of this act mandates an
15 increased level of service by local governments, the local government
16 may, under RCW 43.135.060 and chapter 4.92 RCW, submit claims for
17 reimbursement by the legislature. The claims shall be subject to
18 verification by the office of financial management.

19 NEW SECTION. **Sec. 43.** Section 37 of this act is necessary for the
20 immediate preservation of the public peace, health, or safety, or
21 support of the state government and its existing public institutions,
22 and takes effect immediately. Sections 34 through 36 of this act take
23 effect November 1, 1998.

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