

CERTIFICATION OF ENROLLMENT

SENATE BILL 6614

Chapter 250, Laws of 2004

58th Legislature
2004 Regular Session

UNAUTHORIZED IMPOUNDS--DAMAGES

EFFECTIVE DATE: 6/10/04

Passed by the Senate February 17, 2004
YEAS 48 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 10, 2004
YEAS 92 NAYS 5

FRANK CHOPP

Speaker of the House of Representatives

Approved March 31, 2004.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
SENATE BILL 6614 as passed by the
Senate and the House of
Representatives on the dates
hereon set forth.

MILTON H. DOUMIT JR.

Secretary

FILED

March 31, 2004 - 2:56 p.m.

**Secretary of State
State of Washington**

SENATE BILL 6614

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By Senators Poulsen, Murray, Hewitt, Sheahan and Brown

Read first time 01/27/2004. Referred to Committee on Highways & Transportation.

1 AN ACT Relating to damages for unauthorized impounds; and amending
2 RCW 46.55.120.

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

4 **Sec. 1.** RCW 46.55.120 and 2003 c 177 s 2 are each amended to read
5 as follows:

6 (1) Vehicles or other items of personal property registered or
7 titled with the department that are impounded by registered tow truck
8 operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, or 9A.88.140
9 may be redeemed only under the following circumstances:

10 (a) Only the legal owner, the registered owner, a person authorized
11 in writing by the registered owner or the vehicle's insurer, a person
12 who is determined and verified by the operator to have the permission
13 of the registered owner of the vehicle or other item of personal
14 property registered or titled with the department, or one who has
15 purchased a vehicle or item of personal property registered or titled
16 with the department from the registered owner who produces proof of
17 ownership or written authorization and signs a receipt therefor, may
18 redeem an impounded vehicle or items of personal property registered or
19 titled with the department. In addition, a vehicle impounded because

1 the operator is in violation of RCW 46.20.342(1)(c) shall not be
2 released until a person eligible to redeem it under this subsection
3 (1)(a) satisfies the requirements of (e) of this subsection, including
4 paying all towing, removal, and storage fees, notwithstanding the fact
5 that the hold was ordered by a government agency. If the department's
6 records show that the operator has been convicted of a violation of RCW
7 46.20.342 or a similar local ordinance within the past five years, the
8 vehicle may be held for up to thirty days at the written direction of
9 the agency ordering the vehicle impounded. A vehicle impounded because
10 the operator is arrested for a violation of RCW 46.20.342 may be
11 released only pursuant to a written order from the agency that ordered
12 the vehicle impounded or from the court having jurisdiction. An agency
13 may issue a written order to release pursuant to a provision of an
14 applicable state agency rule or local ordinance authorizing release on
15 the basis of the following:

16 (i) Economic or personal hardship to the spouse of the operator,
17 taking into consideration public safety factors, including the
18 operator's criminal history and driving record; or

19 (ii) The owner of the vehicle was not the driver, the owner did not
20 know that the driver's license was suspended or revoked, and the owner
21 has not received a prior release under this subsection or RCW
22 46.55.113(3).

23 In order to avoid discriminatory application, other than for the
24 reasons for release set forth in (a)(i) and (ii) of this subsection, an
25 agency shall, under a provision of an applicable state agency rule or
26 local ordinance, deny release in all other circumstances without
27 discretion.

28 If a vehicle is impounded because the operator is in violation of
29 RCW 46.20.342(1) (a) or (b), the vehicle may be held for up to thirty
30 days at the written direction of the agency ordering the vehicle
31 impounded. However, if the department's records show that the operator
32 has been convicted of a violation of RCW 46.20.342(1) (a) or (b) or a
33 similar local ordinance within the past five years, the vehicle may be
34 held at the written direction of the agency ordering the vehicle
35 impounded for up to sixty days, and for up to ninety days if the
36 operator has two or more such prior offenses. If a vehicle is
37 impounded because the operator is arrested for a violation of RCW
38 46.20.342, the vehicle may not be released until a person eligible to

1 redeem it under this subsection (1)(a) satisfies the requirements of
2 (e) of this subsection, including paying all towing, removal, and
3 storage fees, notwithstanding the fact that the hold was ordered by a
4 government agency.

5 (b) If the vehicle is directed to be held for a suspended license
6 impound, a person who desires to redeem the vehicle at the end of the
7 period of impound shall within five days of the impound at the request
8 of the tow truck operator pay a security deposit to the tow truck
9 operator of not more than one-half of the applicable impound storage
10 rate for each day of the proposed suspended license impound. The tow
11 truck operator shall credit this amount against the final bill for
12 removal, towing, and storage upon redemption. The tow truck operator
13 may accept other sufficient security in lieu of the security deposit.
14 If the person desiring to redeem the vehicle does not pay the security
15 deposit or provide other security acceptable to the tow truck operator,
16 the tow truck operator may process and sell at auction the vehicle as
17 an abandoned vehicle within the normal time limits set out in RCW
18 46.55.130(1). The security deposit required by this section may be
19 paid and must be accepted at any time up to twenty-four hours before
20 the beginning of the auction to sell the vehicle as abandoned. The
21 registered owner is not eligible to purchase the vehicle at the
22 auction, and the tow truck operator shall sell the vehicle to the
23 highest bidder who is not the registered owner.

24 (c) Notwithstanding (b) of this subsection, a rental car business
25 may immediately redeem a rental vehicle it owns by payment of the costs
26 of removal, towing, and storage, whereupon the vehicle will not be held
27 for a suspended license impound.

28 (d) Notwithstanding (b) of this subsection, a motor vehicle dealer
29 or lender with a perfected security interest in the vehicle may redeem
30 or lawfully repossess a vehicle immediately by payment of the costs of
31 removal, towing, and storage, whereupon the vehicle will not be held
32 for a suspended license impound. A motor vehicle dealer or lender with
33 a perfected security interest in the vehicle may not knowingly and
34 intentionally engage in collusion with a registered owner to repossess
35 and then return or resell a vehicle to the registered owner in an
36 attempt to avoid a suspended license impound. However, this provision
37 does not preclude a vehicle dealer or a lender with a perfected
38 security interest in the vehicle from repossessing the vehicle and then

1 selling, leasing, or otherwise disposing of it in accordance with
2 chapter 62A.9A RCW, including providing redemption rights to the debtor
3 under RCW 62A.9A-623. If the debtor is the registered owner of the
4 vehicle, the debtor's right to redeem the vehicle under chapter 62A.9A
5 RCW is conditioned upon the debtor obtaining and providing proof from
6 the impounding authority or court having jurisdiction that any fines,
7 penalties, and forfeitures owed by the registered owner, as a result of
8 the suspended license impound, have been paid, and proof of the payment
9 must be tendered to the vehicle dealer or lender at the time the debtor
10 tenders all other obligations required to redeem the vehicle. Vehicle
11 dealers or lenders are not liable for damages if they rely in good
12 faith on an order from the impounding agency or a court in releasing a
13 vehicle held under a suspended license impound.

14 (e) The vehicle or other item of personal property registered or
15 titled with the department shall be released upon the presentation to
16 any person having custody of the vehicle of commercially reasonable
17 tender sufficient to cover the costs of towing, storage, or other
18 services rendered during the course of towing, removing, impounding, or
19 storing any such vehicle, with credit being given for the amount of any
20 security deposit paid under (b) of this subsection. In addition, if a
21 vehicle is impounded because the operator was arrested for a violation
22 of RCW 46.20.342 or 46.20.345 and was being operated by the registered
23 owner when it was impounded under local ordinance or agency rule, it
24 must not be released to any person until the registered owner
25 establishes with the agency that ordered the vehicle impounded or the
26 court having jurisdiction that any penalties, fines, or forfeitures
27 owed by him or her have been satisfied. Registered tow truck operators
28 are not liable for damages if they rely in good faith on an order from
29 the impounding agency or a court in releasing a vehicle held under a
30 suspended license impound. Commercially reasonable tender shall
31 include, without limitation, cash, major bank credit cards issued by
32 financial institutions, or personal checks drawn on Washington state
33 branches of financial institutions if accompanied by two pieces of
34 valid identification, one of which may be required by the operator to
35 have a photograph. If the towing firm cannot determine through the
36 customer's bank or a check verification service that the presented
37 check would be paid by the bank or guaranteed by the service, the
38 towing firm may refuse to accept the check. Any person who stops

1 payment on a personal check or credit card, or does not make
2 restitution within ten days from the date a check becomes insufficient
3 due to lack of funds, to a towing firm that has provided a service
4 pursuant to this section or in any other manner defrauds the towing
5 firm in connection with services rendered pursuant to this section
6 shall be liable for damages in the amount of twice the towing and
7 storage fees, plus costs and reasonable attorney's fees.

8 (2)(a) The registered tow truck operator shall give to each person
9 who seeks to redeem an impounded vehicle, or item of personal property
10 registered or titled with the department, written notice of the right
11 of redemption and opportunity for a hearing, which notice shall be
12 accompanied by a form to be used for requesting a hearing, the name of
13 the person or agency authorizing the impound, and a copy of the towing
14 and storage invoice. The registered tow truck operator shall maintain
15 a record evidenced by the redeeming person's signature that such
16 notification was provided.

17 (b) Any person seeking to redeem an impounded vehicle under this
18 section has a right to a hearing in the district or municipal court for
19 the jurisdiction in which the vehicle was impounded to contest the
20 validity of the impoundment or the amount of towing and storage
21 charges. The district court has jurisdiction to determine the issues
22 involving all impoundments including those authorized by the state or
23 its agents. The municipal court has jurisdiction to determine the
24 issues involving impoundments authorized by agents of the municipality.
25 Any request for a hearing shall be made in writing on the form provided
26 for that purpose and must be received by the appropriate court within
27 ten days of the date the opportunity was provided for in subsection
28 (2)(a) of this section and more than five days before the date of the
29 auction. At the time of the filing of the hearing request, the
30 petitioner shall pay to the court clerk a filing fee in the same amount
31 required for the filing of a suit in district court. If the hearing
32 request is not received by the court within the ten-day period, the
33 right to a hearing is waived and the registered owner is liable for any
34 towing, storage, or other impoundment charges permitted under this
35 chapter. Upon receipt of a timely hearing request, the court shall
36 proceed to hear and determine the validity of the impoundment.

37 (3)(a) The court, within five days after the request for a hearing,
38 shall notify the registered tow truck operator, the person requesting

1 the hearing if not the owner, the registered and legal owners of the
2 vehicle or other item of personal property registered or titled with
3 the department, and the person or agency authorizing the impound in
4 writing of the hearing date and time.

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

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

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

22 (e) If the impoundment is determined to be in violation of this
23 chapter, then the registered and legal owners of the vehicle or other
24 item of personal property registered or titled with the department
25 shall bear no impoundment, towing, or storage fees, and any security
26 shall be returned or discharged as appropriate, and the person or
27 agency who authorized the impoundment shall be liable for any towing,
28 storage, or other impoundment fees permitted under this chapter. The
29 court shall enter judgment in favor of the registered tow truck
30 operator against the person or agency authorizing the impound for the
31 impoundment, towing, and storage fees paid. In addition, the court
32 shall enter judgment in favor of the registered and legal owners of the
33 vehicle, or other item of personal property registered or titled with
34 the department, for the amount of the filing fee required by law for
35 the impound hearing petition as well as reasonable damages for loss of
36 the use of the vehicle during the time the same was impounded(~~(, for~~
37 ~~not less than fifty dollars per day,~~)) against the person or agency
38 authorizing the impound. However, if an impoundment arising from an

1 alleged violation of RCW 46.20.342 or 46.20.345 is determined to be in
2 violation of this chapter, then the law enforcement officer directing
3 the impoundment and the government employing the officer are not liable
4 for damages if the officer relied in good faith and without gross
5 negligence on the records of the department in ascertaining that the
6 operator of the vehicle had a suspended or revoked driver's license.
7 If any judgment entered is not paid within fifteen days of notice in
8 writing of its entry, the court shall award reasonable attorneys' fees
9 and costs against the defendant in any action to enforce the judgment.
10 Notice of entry of judgment may be made by registered or certified
11 mail, and proof of mailing may be made by affidavit of the party
12 mailing the notice. Notice of the entry of the judgment shall read
13 essentially as follows:

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

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

Passed by the Senate February 17, 2004.
Passed by the House March 10, 2004.
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