CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 1362

Chapter 387, Laws of 2009

61st Legislature
2009 Regular Session

PROSTITUTION-RELATED OFFENSES--VEHICLE IMPOUNDMENT

EFFECTIVE DATE: 07/26/09

Passed by the House April 18, 2009
Yeas 97  Nays 0

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate April 9, 2009
Yeas 47  Nays 0

BRAD OWEN
President of the Senate

Approved May 7, 2009, 2:12 p.m.

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE HOUSE BILL 1362 as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER
Chief Clerk

FILED

May 8, 2009

CHRISTINE GREGOIRE
Governor of the State of Washington
1 AN ACT Relating to vehicles used in prostitution-related offenses; and amending RCW 9A.88.140, 43.63A.740, and 46.55.120.

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

Sec. 1. RCW 9A.88.140 and 2007 c 368 s 8 are each amended to read as follows:

   (1)(a) Upon an arrest for a suspected violation of patronizing a prostitute ((or promoting prostitution in the first degree, promoting prostitution in the second degree, promoting travel for prostitution, commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, or promoting travel for commercial sexual abuse of a minor), the arresting law enforcement officer may impound the person's vehicle if ((a) (i) the motor vehicle was used in the commission of the crime; (b)) (ii) the person arrested is the owner of the vehicle or the vehicle is a rental car as defined in RCW 46.04.465; and ((c)) (iii) either (A) the person arrested has previously been convicted of ((patronizing a prostitute, under RCW 9A.88.110, or commercial sexual abuse of a minor, under RCW 9.68A.100)) one of the offenses listed in this subsection or (B) the offense was committed within an area designated under (b) of this subsection.
(b) A local governing authority may designate areas within which vehicles are subject to impoundment under this section regardless of whether the person arrested has previously been convicted of any of the offenses listed in (a) of this subsection.

(i) The designation must be based on evidence indicating that the area has a disproportionately higher number of arrests for the offenses listed in (a) of this subsection as compared to other areas within the same jurisdiction.

(ii) The local governing authority shall post signs at the boundaries of the designated area to indicate that the area has been designated under this subsection.

(2) Impoundments performed under this section shall be in accordance with chapter 46.55 RCW and the impoundment order must clearly state "prostitution hold."

(3)(a) Prior to redeeming the impounded vehicle, and in addition to all applicable impoundment, towing, and storage fees paid to the towing company under chapter 46.55 RCW, the owner of the impounded vehicle must pay a fine of five hundred dollars to the impounding agency. The fine shall be deposited in the prostitution prevention and intervention account established under RCW 43.63A.740.

(b) Upon receipt of the fine paid under (a) of this subsection, the impounding agency shall issue a written receipt to the owner of the impounded vehicle.

(4)(a) In order to redeem a vehicle impounded under this section, the owner must provide the towing company with the written receipt issued under subsection (3)(b) of this section.

(b) The written receipt issued under subsection (3)(b) of this section authorizes the towing company to release the impounded vehicle upon payment of all impoundment, towing, and storage fees.

(c) A towing company that relies on a forged receipt to release a vehicle impounded under this section is not liable to the impounding authority for any unpaid fine under subsection (3)(a) of this section.

(5)(a) In any proceeding under chapter 46.55 RCW to contest the validity of an impoundment under this section where the claimant substantially prevails, the claimant is entitled to a full refund of the impoundment, towing, and storage fees paid under chapter 46.55 RCW and the five hundred dollar fine paid under subsection (3) of this section.
(b) If the person is found not guilty at trial for a crime listed under subsection (1) of this section, the person is entitled to a full refund of the impoundment, towing, and storage fees paid under chapter 46.55 RCW and the five hundred dollar fine paid under subsection (3) of this section.

(c) All refunds made under this section shall be paid by the impounding agency.

(d) Prior to receiving any refund under this section, the claimant must provide proof of payment.

Sec. 2. RCW 43.63A.740 and 1995 c 353 s 11 are each amended to read as follows:

The prostitution prevention and intervention account is created in the state treasury. All designated receipts from fees under RCW 9.68A.105 and 9A.88.120 and fines collected under RCW 9A.88.140 shall be deposited into the account. Expenditures from the account may be used only for funding the grant program to enhance prostitution prevention and intervention services under RCW 43.63A.720.

Sec. 3. RCW 46.55.120 and 2004 c 250 s 1 are each amended to read as follows:

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

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle or other item of personal property registered or titled with the department, or one who has purchased a vehicle or item of personal property registered or titled with the department from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor, may redeem an impounded vehicle or items of personal property registered or titled with the department. In addition, a vehicle impounded because the operator is in violation of RCW 46.20.342(1)(c) shall not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (e) of this subsection, including...
paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency. If the department's records show that the operator has been convicted of a violation of RCW 46.20.342 or a similar local ordinance within the past five years, the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. A vehicle impounded because the operator is arrested for a violation of RCW 46.20.342 may be released only pursuant to a written order from the agency that ordered the vehicle impounded or from the court having jurisdiction. An agency ((may)) shall issue a written order to release pursuant to a provision of an applicable state agency rule or local ordinance authorizing release on the basis of the following:

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

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

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

If a vehicle is impounded because the operator is in violation of RCW 46.20.342(1) (a) or (b), the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. However, if the department's records show that the operator has been convicted of a violation of RCW 46.20.342(1) (a) or (b) or a similar local ordinance within the past five years, the vehicle may be held at the written direction of the agency ordering the vehicle impounded for up to sixty days, and for up to ninety days if the operator has two or more such prior offenses. If a vehicle is impounded because the operator is arrested for a violation of RCW 46.20.342, the vehicle may not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (e) of this subsection, including paying all towing, removal, and
storage fees, notwithstanding the fact that the hold was ordered by a
government agency.

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

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

(d) Notwithstanding (b) of this subsection, a motor vehicle dealer
or lender with a perfected security interest in the vehicle may redeem
or lawfully repossess a vehicle immediately by payment of the costs of
removal, towing, and storage, whereupon the vehicle will not be held
for a suspended license impound. A motor vehicle dealer or lender with
a perfected security interest in the vehicle may not knowingly and
intentionally engage in collusion with a registered owner to repossess
and then return or resell a vehicle to the registered owner in an
attempt to avoid a suspended license impound. However, this provision
does not preclude a vehicle dealer or a lender with a perfected
security interest in the vehicle from repossessing the vehicle and then
selling, leasing, or otherwise disposing of it in accordance with
chapter 62A.9A RCW, including providing redemption rights to the debtor
under RCW 62A.9A-623. If the debtor is the registered owner of the vehicle, the debtor's right to redeem the vehicle under chapter 62A.9A RCW is conditioned upon the debtor obtaining and providing proof from the impounding authority or court having jurisdiction that any fines, penalties, and forfeitures owed by the registered owner, as a result of the suspended license impound, have been paid, and proof of the payment must be tendered to the vehicle dealer or lender at the time the debtor tenders all other obligations required to redeem the vehicle. Vehicle dealers or lenders are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound.

(e) The vehicle or other item of personal property registered or titled with the department shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle, with credit being given for the amount of any security deposit paid under (b) of this subsection. In addition, if a vehicle is impounded because the operator was arrested for a violation of RCW 46.20.342 or 46.20.345 and was being operated by the registered owner when it was impounded under local ordinance or agency rule, it must not be released to any person until the registered owner establishes with the agency that ordered the vehicle impounded or the court having jurisdiction that any penalties, fines, or forfeitures owed by him or her have been satisfied. Registered tow truck operators are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards issued by financial institutions, or personal checks drawn on Washington state branches of financial institutions if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. If the towing firm cannot determine through the customer's bank or a check verification service that the presented check would be paid by the bank or guaranteed by the service, the towing firm may refuse to accept the check. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days from the date a check becomes insufficient
due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

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

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

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

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

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

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

(e) If the impoundment is determined to be in violation of this
chapter, then the registered and legal owners of the vehicle or other
item of personal property registered or titled with the department
shall bear no impoundment, towing, or storage fees, and any security
shall be returned or discharged as appropriate, and the person or
agency who authorized the impoundment shall be liable for any towing,
storage, or other impoundment fees permitted under this chapter. The
court shall enter judgment in favor of the registered tow truck
operator against the person or agency authorizing the impound for the
impoundment, towing, and storage fees paid. In addition, the court
shall enter judgment in favor of the registered and legal owners of the
vehicle, or other item of personal property registered or titled with
the department, for the amount of the filing fee required by law for
the impound hearing petition as well as reasonable damages for loss of
the use of the vehicle during the time the same was impounded against
the person or agency authorizing the impound. However, if an
impoundment arising from an alleged violation of RCW 46.20.342 or
46.20.345 is determined to be in violation of this chapter, then the
law enforcement officer directing the impoundment and the government employing the officer are not liable for damages if the officer relied in good faith and without gross negligence on the records of the department in ascertaining that the operator of the vehicle had a suspended or revoked driver's license. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment shall read essentially as follows:

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

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

Passed by the House April 18, 2009.
Passed by the Senate April 9, 2009.
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