

HOUSE BILL 1260

State of Washington 52nd Legislature 1991 Regular Session

By Representatives Ferguson, Rasmussen, Ballard, Haugen, Nealey, Winsley, Zellinsky, May, Broback, Beck, Tate, Spanel, Brumsickle, Fuhrman, Moyer, Dorn, D. Sommers, Forner, Paris, Vance, Hochstatter, Betrozoff, Wood, Horn, Brough, Chandler, Miller, Mitchell, Rayburn and Morris.

Read first time January 25, 1991. Referred to Committee on Judiciary.

1 AN ACT Relating to forfeiture of motor vehicles; adding a new
2 section to chapter 46.16 RCW; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.16 RCW
5 to read as follows:

6 (1) A motor vehicle operated by a person whose driver's license is
7 in a suspended or revoked status or whose privilege to operate a motor
8 vehicle is suspended or revoked in this or any other state is subject
9 to seizure and forfeiture and no property right exists in the vehicle
10 except as follows:

11 (a) No vehicle used by a person as a common carrier in the
12 transaction of business as a common carrier is subject to forfeiture
13 under this section unless it appears that the owner or other person in
14 charge of the vehicle is a consenting party or privy to a violation of
15 this section;

1 (b) No vehicle is subject to forfeiture under this section by
2 reason of an act or omission established by the owner of the vehicle to
3 have been committed or omitted without the owner's knowledge or
4 consent;

5 (c) A forfeiture of a vehicle encumbered by a bona fide security
6 interest is subject to the interest of the secured party if the secured
7 party neither had knowledge of nor consented to the act or omission;
8 and

9 (d) When the owner of a vehicle has been arrested under this
10 chapter the vehicle in which the person is arrested is not subject to
11 forfeiture unless it is seized or process is issued for its seizure
12 within ten days of the owner's arrest.

13 (2) A vehicle subject to forfeiture under this section may be
14 seized by a law enforcement officer of this state upon process issued
15 by a superior court having jurisdiction over the vehicle. Seizure of
16 a vehicle without process may be made if:

17 (a) The seizure is incident to an arrest or a search under a search
18 warrant;

19 (b) The vehicle subject to seizure has been the subject of a prior
20 judgment in favor of the state in a criminal injunction or forfeiture
21 proceeding based upon this section;

22 (c) A law enforcement officer has probable cause to believe that
23 the vehicle is directly or indirectly dangerous to health or safety; or

24 (d) The law enforcement officer has probable cause to believe that
25 the vehicle was used or is intended to be used in violation of this
26 section.

27 (3) In the event of seizure under subsection (2) of this section,
28 proceedings for forfeiture are commenced by the seizure. The law
29 enforcement agency under whose authority the seizure was made shall
30 cause notice to be served within fifteen days following the seizure on

1 the owner of the vehicle seized and the person in charge of it and any
2 person having any known right or interest in it, including any
3 community property interest, of the seizure and intended forfeiture of
4 the seized vehicle. The notice of seizure may be served by any method
5 authorized by law or court rule including but not limited to service by
6 certified mail with return receipt requested. Service by mail is
7 complete upon mailing within the fifteen-day period after the seizure.

8 (4) If no person notifies the seizing law enforcement agency in
9 writing of the person's claim of ownership or right to possession of
10 the vehicle within forty-five days of the seizure, the vehicle is
11 deemed forfeited.

12 (5) If a person notifies the seizing law enforcement agency in
13 writing of the person's claim of ownership or right to possession of
14 the vehicle within forty-five days of the seizure, the person or
15 persons shall be given a reasonable opportunity to be heard as to the
16 claim or right. The hearing shall be before the chief law enforcement
17 officer of the seizing agency or the chief law enforcement officer's
18 designee. A person asserting a claim or right may remove the matter to
19 a court of competent jurisdiction if the value of the vehicle involved
20 is more than five hundred dollars. The court to which the matter is to
21 be removed shall be the district court when the value is ten thousand
22 dollars or less. A hearing before the seizing agency and any appeal
23 from the decision shall be under Title 34 RCW. In a court hearing
24 between two or more claimants to the vehicle, the prevailing party is
25 entitled to a judgment for costs and reasonable attorneys' fees. The
26 burden of producing evidence is upon the person claiming to be the
27 lawful owner or the person claiming to have the lawful right to
28 possession of the vehicle. The seizing law enforcement agency shall
29 promptly return the vehicle to the claimant upon a determination by the

1 hearing officer or court that the claimant is the present lawful owner
2 or is lawfully entitled to possession of the vehicle.

3 (6) When a vehicle is forfeited under this section the seizing law
4 enforcement agency may:

5 (a) Retain it for official use or, upon application by any law
6 enforcement agency of this state, release the vehicle to such agency
7 for the exclusive use of enforcing this title;

8 (b) (i) Sell the vehicle, in which case the proceeds shall be used
9 for payment of all proper expenses of the investigation leading to the
10 seizure and of the proceedings for forfeiture and sale, including
11 expenses of seizure, storage, advertising, actual costs of the
12 prosecuting or city attorney, and court costs. Money remaining after
13 the payment of all expenses shall be distributed as follows:

14 (A) Seventy-five percent shall be deposited in the general fund of
15 the state, county, or city of the seizing law enforcement agency;

16 (B) Twenty-five percent shall be remitted to the state treasurer
17 for deposit in the highway safety fund established in RCW 46.68.060;

18 (ii) Money deposited according to this section must be deposited
19 within ninety days of the date of final disposition of either the
20 administrative seizure or the judicial seizure; or

21 (c) Request the appropriate sheriff or director of public safety to
22 take custody of the vehicle and remove it for disposition in accordance
23 with law.