

1 **ESSB 5815** - H AMD TO H AMD (5815-S.E AMH APPE PERR 05)

2 By Representative Riley

3 On page 11 of the amendment, after line 20 add the following:

4 "NEW SECTION. **Sec. 2.** A new section is added to chapter
5 46.61 RCW to read as follows:

6 (1) A vehicle driven by or under the actual physical control
7 of the owner of the vehicle in violation of RCW 46.61.502 or
8 46.61.504 is, upon the conviction of the owner when that conviction
9 is the second or subsequent conviction for a violation of RCW
10 46.61.502 or 46.61.504 within a five-year period, subject to
11 seizure and forfeiture and no property right exists in that
12 vehicle.

13 A forfeiture of a vehicle encumbered by a bona fide security
14 interest is subject to the interest of the secured party if the
15 secured party neither had knowledge of nor consented to the
16 violation of RCW 46.61.502 or 46.61.504.

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

23 (3) A seizure under subsection (2) of this section
24 automatically commences proceedings for forfeiture. The law
25 enforcement agency under whose authority the seizure was made shall
26 cause notice of the seizure and intended forfeiture of the seized
27 vehicle to be served within fifteen days after the seizure on the
28 owner of the vehicle seized, on the person in charge of the
29 vehicle, and on any person having a known right or interest in the
30 vehicle, including a community property interest. The notice of
31 seizure may be served by any method authorized by law or court

1 rule, including but not limited to service by certified mail with
2 return receipt requested. Service by mail is complete upon mailing
3 within the fifteen-day period after the seizure. Notice of seizure
4 in the case of property subject to a security interest that has
5 been perfected by filing a financing statement in accordance with
6 chapter 62A.9 RCW, or a certificate of title shall be made by
7 service upon the secured party to the secured party's assignee at
8 the address shown on the financing statement or the certificate of
9 title.

10 (4) If no person notifies the seizing law enforcement agency
11 in writing of the person's claim of ownership or right to
12 possession of the seized vehicle within ninety days of the seizure,
13 the vehicle is deemed forfeited. A perfected security interest of
14 a secured party may be extinguished only after a contested hearing
15 or agreement by the secured party.

16 (5) If a person notifies the seizing law enforcement agency in
17 writing of the person's claim of ownership or right to possession
18 of the seized vehicle within ninety days of the seizure, the law
19 enforcement agency shall give the person or persons a reasonable
20 opportunity to be heard as to the claim or right. The prosecuting
21 attorney shall file the case into a court of competent
22 jurisdiction. The court to which the matter is file shall be the
23 district court when the value of the vehicle is within the
24 jurisdictional limit of the district court. In a court hearing
25 between two or more claimants to the vehicle involved, the
26 prevailing party is entitled to a judgment for costs and reasonable
27 attorneys' fees. The burden of producing evidence is upon the
28 person claiming to be the lawful owner or the person claiming to
29 have the lawful right to possession of the vehicle. The seizing
30 law enforcement agency shall promptly return the vehicle to the
31 claimant upon a determination by the chief law enforcement officer,
32 of the seizing agency, the chief law enforcement officer's
33 designee, or the court that the claimant neither knew of nor

1 consented to the violation leading to seizure and is the present
2 lawful owner or is lawfully entitled to possession of the vehicle.

3 (6) When a vehicle is forfeited under this chapter the seizing
4 law enforcement agency may sell the vehicle, retain it for official
5 use, or upon application by a law enforcement agency of this state
6 release the vehicle to that agency for the exclusive use of
7 enforcing this title.

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

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

15 (9) Each seizing agency shall file a report including a copy
16 of the records of forfeited vehicles with the state treasurer each
17 calendar quarter.

18 (10) The quarterly report need not include a record of a
19 forfeited vehicle that is still being held for use as evidence
20 during the investigation or prosecution of a case or during the
21 appeal from a conviction.

22 (11) By January 31st of each year, each seizing agency shall
23 remit to the state treasurer an amount equal to ten percent of the
24 net proceeds of vehicles forfeited during the preceding calendar
25 year. Money remitted shall be deposited in the public safety and
26 education account.

27 (12) The net proceeds of a forfeited vehicle is the value of
28 the forfeitable interest in the vehicle after deducting the cost of
29 satisfying a bona fide security interest to which the vehicle is
30 subject at the time of seizure; and in the case of a sold vehicle,
31 after deducting the cost of sale, including reasonable fees or
32 commissions paid to independent selling agents.

1 (13) The value of a sold forfeited vehicle is the sale price.
2 The value of a retained forfeited vehicle is the fair market value
3 of the vehicle at the time of seizure, determined when possible by
4 reference to an applicable commonly used index, such as the index
5 used by the department of licensing. A seizing agency may use, but
6 need not use, an independent qualified appraiser to determine the
7 value of retained vehicles. If an appraiser is used, the value of
8 the vehicle appraised is net of the cost of the appraisal.

9 NEW SECTION. Sec. 3. A new section is added to chapter 46.61
10 RCW to read as follows:

11 (1) Whenever a person is charged with a violation of RCW
12 46.61.502 or 46.61.504 and that person has been previously
13 convicted for a violation of RCW 46.61.502 or 46.61.504 within a
14 five-year period, the court shall instruct the person charged of
15 the provisions of section 5 of this act and shall immediately
16 forward notice of the charge to the director.

17 (2) Upon the conviction or acquittal of the person charged or
18 if a pending charge is otherwise terminated, the court shall
19 immediately forward notice of the conviction, acquittal or other
20 termination of charge to the director.

21 NEW SECTION. Sec. 4. A new section is added to chapter 46.12
22 RCW to read as follows:

23 Upon receiving notice of a charge under section 3 of this act,
24 the director shall withhold the issuance of a certificate of
25 ownership on a vehicle subject to section 5 of this act unless the
26 applicant is included in the exceptions listed in that section or
27 until receiving notice of acquittal or other termination of the
28 charge under section 3 of this act.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 46.12
2 RCW to read as follows:

3 It is unlawful to convey, sell, or transfer the ownership of
4 a motor vehicle that was driven by or was under the actual physical
5 control of the owner of the vehicle who has previously been
6 convicted for a violation of RCW 46.61.502 or 46.61.504 within a
7 five-year period and is currently charged with a violation of RCW
8 46.61.502 or 46.61.504, except that:

9 (1) A vehicle encumbered by a bona fide security interest may
10 be transferred to the secured party or to a person designated by
11 the secured party; and

12 (2) A leased vehicle may be transferred to the lessor or to a
13 person designated by the lessor.

14 **Sec. 6.** RCW 46.12.270 and 1969 ex.s. c 125 s 3 are each
15 amended to read as follows:

16 Any person violating ~~((the provisions of))~~ RCW 46.12.250
17 ~~((or))~~, 46.12.260 ~~((shall be))~~, or section 5 of this act is guilty
18 of a misdemeanor and shall be punished by a fine of not more than
19 two hundred fifty dollars or by imprisonment in a county jail for
20 not more than ninety days."