

---

SECOND SUBSTITUTE SENATE BILL 5341

---

State of Washington

53rd Legislature

1994 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators A. Smith, Quigley, McCaslin, Vognild, Winsley, Deccio, von Reichbauer, M. Rasmussen, Roach and Oke)

Read first time 01/26/94.

1 AN ACT Relating to driving while under the influence of  
2 intoxicating liquor or drugs; amending RCW 46.12.270; adding a new  
3 section to chapter 46.61 RCW; repealing RCW 46.61.511, 46.61.512,  
4 46.12.400, and 46.12.410; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.61 RCW  
7 to read as follows:

8 (1) Upon the arrest of a person or upon the filing of a complaint,  
9 citation, or information in a court of competent jurisdiction, based  
10 upon probable cause to believe that a person has violated RCW 46.61.502  
11 or 46.61.504 or any similar municipal ordinance, if such person has a  
12 previous conviction for violation of either RCW 46.61.502 or 46.61.504  
13 or other similar municipal ordinance, and where the offense occurs  
14 within a five-year period of the previous conviction, and where the  
15 person has been provided written notice that any transfer, sale, or  
16 encumbrance of such person's interest in the vehicle over which that  
17 person was actually driving or had physical control when the violation  
18 occurred, is unlawful pending either acquittal, dismissal, sixty days  
19 after conviction, or other termination of the charge, such person shall

1 be prohibited from encumbering, selling, or transferring his or her  
2 interest in such vehicle, except as otherwise provided in (a), (b), and  
3 (c) of this subsection, until either acquittal, dismissal, sixty days  
4 after conviction, or other termination of the charge. The prohibition  
5 against transfer of title shall not be stayed pending the determination  
6 of an appeal from the conviction.

7 (a) A vehicle encumbered by a bona fide security interest may be  
8 transferred to the secured party or to a person designated by the  
9 secured party;

10 (b) A leased or rented vehicle may be transferred to the lessor,  
11 rental agency, or to a person designated by the lessor or rental  
12 agency; and

13 (c) A vehicle may be transferred to a third party or a vehicle  
14 dealer who is a bona fide purchaser or may be subject to a bona fide  
15 security interest in the vehicle unless it is established that either  
16 (i) the purchaser had actual notice that the vehicle was subject to the  
17 prohibition prior to the transfer of title, or (ii) the holder of the  
18 security interest had actual notice that the vehicle was subject to the  
19 prohibition prior to the encumbrance of title.

20 (2) On a second or subsequent conviction for a violation of either  
21 RCW 46.61.502 or 46.61.504 or any similar municipal ordinance where  
22 such offense was committed within a five-year period of the previous  
23 conviction, the motor vehicle the person was driving or over which the  
24 person had actual physical control at the time of the offense, if the  
25 person has a financial interest in the vehicle, is subject to seizure  
26 and forfeiture pursuant to this section.

27 (3) A vehicle subject to forfeiture under this chapter may be  
28 seized by a law enforcement officer of this state upon process issued  
29 by a court of competent jurisdiction. Seizure of a vehicle may be made  
30 without process if the vehicle subject to seizure has been the subject  
31 of a prior judgment in favor of the state in a forfeiture proceeding  
32 based upon this section.

33 (4) Seizure under subsection (3) of this section automatically  
34 commences proceedings for forfeiture. The law enforcement agency under  
35 whose authority the seizure was made shall cause notice of the seizure  
36 and intended forfeiture of the seized vehicle to be served within  
37 fifteen days after the seizure on the owner of the vehicle seized, on  
38 the person in charge of the vehicle, and on any person having a known  
39 right or interest in the vehicle, including a community property

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

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

13 (6) If a person notifies the seizing law enforcement agency in  
14 writing of the person's claim of ownership or right to possession of  
15 the seized vehicle within forty-five days of the seizure, the law  
16 enforcement agency shall give the person or persons a reasonable  
17 opportunity to be heard as to the claim or right. The hearing shall be  
18 before the chief law enforcement officer of the seizing agency or the  
19 chief law enforcement officer's designee, except where the seizing  
20 agency is a state agency as defined in RCW 34.12.020, the hearing shall  
21 be before the chief law enforcement officer of the seizing agency or an  
22 administrative law judge appointed under chapter 34.12 RCW, except that  
23 any person asserting a claim or right may remove the matter to a court  
24 of competent jurisdiction. Removal may only be accomplished according  
25 to the rules of civil procedure. The person seeking removal of the  
26 matter must serve process against the state, county, political  
27 subdivision, or municipality that operates the seizing agency, and any  
28 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,  
29 within forty-five days after the person seeking removal has notified  
30 the seizing law enforcement agency of the person's claim of ownership  
31 or right to possession. The court to which the matter is to be removed  
32 shall be the district court when the aggregate value of the vehicle is  
33 within the jurisdictional limit set forth in RCW 3.66.020. A hearing  
34 before the seizing agency and any appeal therefrom shall be under Title  
35 34 RCW. In a court hearing between two or more claimants to the  
36 vehicle involved, the prevailing party shall be entitled to a judgment  
37 for costs and reasonable attorneys' fees. The burden of producing  
38 evidence shall be upon the person claiming to be the legal owner or the  
39 person claiming to have the lawful right to possession of the vehicle.

1 The seizing law enforcement agency shall promptly return the vehicle to  
2 the claimant upon a determination by the administrative law judge or  
3 court that the claimant is the present legal owner under Title 46 RCW  
4 or is lawfully entitled to possession of the vehicle.

5 (7) When a vehicle is forfeited under this chapter the seizing law  
6 enforcement agency may sell the vehicle, retain it for official use, or  
7 upon application by a law enforcement agency of this state release the  
8 vehicle to that agency for the exclusive use of enforcing this title;  
9 provided, however, that the agency shall first satisfy any bona fide  
10 security interest to which the vehicle is subject under subsection (1)  
11 (a) or (c) of this section.

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

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

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

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

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

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

37 (14) The value of a sold forfeited vehicle is the sale price. The  
38 value of a retained forfeited vehicle is the fair market value of the  
39 vehicle at the time of seizure, determined when possible by reference

1 to an applicable commonly used index, such as the index used by the  
2 department of licensing. A seizing agency may, but need not, use an  
3 independent qualified appraiser to determine the value of retained  
4 vehicles. If an appraiser is used, the value of the vehicle appraised  
5 is net of the cost of the appraisal.

6 **Sec. 2.** RCW 46.12.270 and 1993 c 487 s 6 are each amended to read  
7 as follows:

8 Any person violating RCW 46.12.250(~~(7)~~) or 46.12.260(~~(7) or~~  
9 ~~46.12.410)) or who transfers title of a vehicle in violation of section  
10 1 of this act, with actual notice of the prohibition, is guilty of a  
11 misdemeanor and shall be punished by a fine of not more than two  
12 hundred fifty dollars or by imprisonment in a county jail for not more  
13 than ninety days.~~

14 NEW SECTION. **Sec. 3.** The following acts or parts of acts are each  
15 repealed:

- 16 (1) RCW 46.61.511 and 1993 c 487 s 2;
- 17 (2) RCW 46.61.512 and 1993 c 487 s 3;
- 18 (3) RCW 46.12.400 and 1993 c 487 s 4; and
- 19 (4) RCW 46.12.410 and 1993 c 487 s 5.

--- END ---