

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE SENATE BILL 5341

Chapter 139, Laws of 1994

53rd Legislature
1994 Regular Session

DRIVING UNDER THE INFLUENCE--VEHICLE SEIZURE AND FORFEITURE

EFFECTIVE DATE: 6/9/94

Passed by the Senate March 5, 1994
YEAS 45 NAYS 1

JOEL PRITCHARD

President of the Senate

Passed by the House March 2, 1994
YEAS 93 NAYS 0

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Approved March 28, 1994

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5341** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

Secretary

FILED

March 28, 1994 - 11:45 a.m.

**Secretary of State
State of Washington**

SECOND SUBSTITUTE SENATE BILL 5341

AS AMENDED BY THE HOUSE

Passed Legislature - 1994 Regular Session

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 (i) in
16 the case of a purchase by a third party or vehicle dealer, such party
17 or dealer had actual notice that the vehicle was subject to the
18 prohibition prior to the purchase, or (ii) in the case of a security
19 interest, the holder of the security interest had actual notice that
20 the vehicle was subject to the prohibition prior to the encumbrance of
21 title.

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

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

35 (4) Seizure under subsection (3) of this section automatically
36 commences proceedings for forfeiture. The law enforcement agency under
37 whose authority the seizure was made shall cause notice of the seizure
38 and intended forfeiture of the seized vehicle to be served within
39 fifteen days after the seizure on the owner of the vehicle seized, on

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 19 (1) RCW 46.61.511 and 1993 c 487 s 2;
20 (2) RCW 46.61.512 and 1993 c 487 s 3;
21 (3) RCW 46.12.400 and 1993 c 487 s 4; and
22 (4) RCW 46.12.410 and 1993 c 487 s 5.

Passed the Senate March 5, 1994.

Passed the House March 2, 1994.

Approved by the Governor March 28, 1994.

Filed in Office of Secretary of State March 28, 1994.