

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1605

Chapter 247, Laws of 2017

65th Legislature
2017 Regular Session

VESSEL IMPOUNDMENT

EFFECTIVE DATE: 7/23/2017

Passed by the House April 17, 2017
Yeas 94 Nays 1

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 7, 2017
Yeas 46 Nays 1

CYRUS HABIB

President of the Senate

Approved May 8, 2017 11:17 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1605** as passed by House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 8, 2017

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1605

AS AMENDED BY THE SENATE

Passed Legislature - 2017 Regular Session

State of Washington 65th Legislature 2017 Regular Session

By House Public Safety (originally sponsored by Representatives Pettigrew, Hayes, and Klippert; by request of Parks and Recreation Commission)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to vessel impoundment; and adding a new section
2 to chapter 79A.60 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 79A.60
5 RCW to read as follows:

6 (1) Whenever the operator of a vessel is arrested for a violation
7 of RCW 79A.60.040, the arresting officer, or another officer acting
8 at the arresting officer's direction, has authority to impound the
9 vessel as provided in this section.

10 (2) This section is not intended to limit or constrain the
11 ability of local government from enacting and enforcing ordinances or
12 other regulations relating to the impoundment of vessels for the
13 purposes of enforcing RCW 79A.60.040.

14 (3) Unless vessel impound is required for evidentiary purposes, a
15 law enforcement officer must seek a series of reasonable alternatives
16 to impound before impounding the vessel. Reasonable alternatives to
17 impound may include, but are not limited to:

18 (a) Working with the vessel's owner to locate a qualified
19 operator who can take possession of the vessel within thirty minutes
20 following the arrest of the vessel's operator and giving possession
21 of the vessel to such a person;

1 (b) Leaving the vessel at a marina, dock, or moorage facility,
2 provided that:

3 (i) The owner is present and willing to sign a liability waiver
4 by which the owner agrees to waive any claims related to such an
5 action against the law enforcement officer and the officer's agency
6 and indemnify the officer and the agency against any claims related
7 to such an action by any third party; and

8 (ii) The owner agrees to pay any applicable moorage charges or
9 fees; and

10 (c) Towing the vessel to the closest boat ramp, marina, or
11 similar type facility where the owner can meet the impounding officer
12 within thirty minutes in order to:

13 (i) Moor the vessel by accepting any applicable moorage charges
14 or fees; or

15 (ii) Take possession of the vessel if the owner was not present
16 at the time of the arrest.

17 (4) For the purposes of this section, storing an impounded vessel
18 may include, but is not limited to:

19 (a) Removing the vessel to and placing it in a secure or other
20 type of moorage facility; or

21 (b) Placing the vessel in the custody of an operator licensed by
22 the United States coast guard per 46 C.F.R. Sec. 11.482 to provide
23 commercial assistance towing services in Washington state who must:

24 (i) Tow it to a storage facility operated by the towing entity
25 for storage or to a moorage facility for storage; or

26 (ii) Tow it to a location designated by the operator or owner of
27 the vessel.

28 (5) In exigent circumstances, an impounding officer may
29 temporarily attach an impounded vessel to a mooring buoy or anchor
30 the vessel to the bottom for up to twenty-four hours, after which
31 time the impounding officer must move or cause the vessel to be moved
32 to an appropriate facility for storage as outlined in subsection (4)
33 of this section.

34 (6) If the impounding officer secures a vessel by placing it on
35 its trailer, the officer, moorage facility representative, or
36 commercial assistance towing service is authorized to detach the
37 vessel's trailer from the vehicle to which it is attached, attach the
38 trailer to an impounding vehicle, operate the vessel to load it on
39 the trailer, and then tow the vessel on its trailer to the storage
40 facility.

1 (7) All vessels must be handled appropriately and returned in
2 substantially the same condition as they existed before being
3 impounded, unless forfeited pursuant to subsection (12) of this
4 section. Except as provided in subsection (12)(b) of this section,
5 all personal property in the vessel must be kept intact and must be
6 returned to the vessel's owner or agent during the normal business
7 hours of the entity storing the vessel upon request, provided the
8 vessel owner, or the owner's agent, is able to provide sufficient
9 proof of his or her identity.

10 (8) No moorage facility or vessel towing service provider is
11 required to accept an impounded or otherwise secured vessel under
12 this section for towing or storage. An impounding officer intending
13 to secure a vessel by means of storing it at a moorage facility must
14 have the permission of the owner or operator of the moorage facility
15 prior to leaving the vessel at the facility. The impounding officer
16 shall identify an authorized person on the vessel impound
17 authorization and inventory form to represent the vessel impound
18 facility. The officer must provide a copy of the vessel impound
19 authorization and inventory form to the designated person
20 representing the vessel impound facility along with the addresses of
21 the registered and legal owners of the vessel. The moorage facility
22 may require that the impounding officer's agency take responsibility
23 for the foreclosure process set forth in subsection (12) of this
24 section before they consent to accept an impounded vessel.

25 (9)(a) An impounding officer impounding a vessel pursuant to this
26 section shall notify the legal and registered owner or owners of the
27 impoundment of the vessel. The notification must be in writing and
28 sent within one business day after the impound by first-class mail,
29 digital transmission, or facsimile to the last known address of the
30 registered and legal owner or owners of the vessel, as identified by
31 the department of licensing, and must inform the owner or owners of
32 the identity of the person or agency authorizing the impound. The
33 impounding officer may serve the operator with the vessel impound
34 authorization and inventory form at the time of impound if the
35 operator is a legal or registered owner of the vessel. Personal
36 service of the vessel impound authorization and inventory form meets
37 the notice requirement of this subsection with respect to the legal
38 or registered owner personally served. The notification must be
39 provided on a vessel impound authorization and inventory form and
40 include: (i) The name, address, and telephone number of the facility

1 where the vessel is being held; (ii) the right of redemption and
2 opportunity for a hearing to contest the validity of the impoundment;
3 and (iii) the rate that is being charged for the storage of the
4 vessel while impounded.

5 (b) A notice does not need to be sent to the legal or registered
6 owner or owners of an impounded vessel if the vessel has been
7 redeemed.

8 (c) The impounded vessel may not be redeemed by the operator
9 within a twelve-hour period starting at the time of the operator's
10 arrest. The vessel may be redeemed by or released to an owner or an
11 agent of the owner that is not the operator within the twelve-hour
12 period following arrest.

13 (10) A moorage facility that accepts a vessel impounded pursuant
14 to this section for storage may charge the owner of the vessel up to
15 one hundred twenty-five percent of the normal moorage rates of
16 tenants or guests in addition to a fee for securing the impounded
17 vessel. A moorage facility must store the vessel in the least costly
18 boat slip or storage area available that is appropriate for the
19 vessel size. An entity that provides emergency vessel towing services
20 that accepts a vessel impounded pursuant to this section for towing
21 or storage, or both, may charge its normal towing and storage fees.
22 The costs of removal and storage of vessels under this section is a
23 lien upon the vessel until paid, unless the impoundment is determined
24 to be invalid. The registered owner of a vessel impounded pursuant to
25 this section is responsible for paying all fees associated with the
26 towing and storage of the vessel resulting from its impoundment,
27 except as otherwise provided in subsection (15) of this section.

28 (11) Within fifteen days of impoundment of the vessel, or until
29 the vessel is forfeited pursuant to subsection (12) of this section,
30 the legal or registered owner of a vessel impounded and stored
31 pursuant to this section may redeem the vessel by paying all towing
32 and storage fees charged as allowed in subsection (10) of this
33 section. Within fifteen days of impoundment of the vessel, or until
34 the vessel is forfeited pursuant to subsection (12) of this section,
35 any person who shows proof of ownership or written authorization from
36 the impounded vessel's registered or legal owner or the vessel's
37 insurer may view the vessel without charge during the normal business
38 hours of the entity storing the vessel. The moorage facility may
39 request that a representative of the impounding agency be present

1 during redemption. If requested, the impounding agency must provide a
2 representative as requested by the moorage facility.

3 (12) If an impounded vessel stored pursuant to this section is
4 not redeemed by its registered or legal owner pursuant to subsection
5 (11) of this section within fifteen days of its impoundment, the
6 entity storing the vessel, or the agency of the impounding officer,
7 if required by the moorage facility under subsection (8) of this
8 section, may initiate foreclosure. Forfeiture by the vessel owner is
9 complete twenty days after mailing of the notice required by this
10 subsection, unless within that time the owner, or any lienholder or
11 holder of a security interest, pays all fees associated with the
12 towing and storage of the vessel resulting from its impoundment.
13 However, foreclosure may not be completed while a hearing under
14 subsection (15) of this section to contest the validity of the
15 impoundment is pending in district or municipal court or while any
16 appeal of a decision of the district or municipal court on the
17 validity of the impoundment is pending.

18 (a) In order to foreclose on the vessel, the foreclosing entity
19 must mail notice of its intent. Such a notice must, at a minimum,
20 state: (i) The intent of the foreclosing entity to foreclose on the
21 vessel; (ii) that, when the foreclosure process is complete, the
22 owner forfeits all ownership interest in the vessel; (iii) the right
23 of the foreclosing entity to take possession of or dispose of the
24 vessel upon completion of the foreclosure process; and (iv) that the
25 owner, or other interested person or entity, may avoid forfeiture of
26 the vessel by paying all fees associated with the towing and storage
27 of the vessel resulting from its impoundment within twenty days of
28 mailing of the notice. The notice must be mailed to the owner of the
29 vessel at the address on file with the state with which the vessel is
30 registered, or on file with the federal government, if the vessel is
31 registered with the federal government, and any lienholder or secured
32 interests on record. A notice need not be sent to the purported owner
33 or any other person whose interest in the vessel is not recorded with
34 a state or with the federal government.

35 (b) Upon completion of the foreclosure process, the registered
36 and legal owners of the vessel forfeit any and all ownership interest
37 in it and the entity administering the foreclosure process must
38 dispose of it through sale. The proceeds of a sale under this section
39 shall be applied first to payment of the amount of reasonable charges
40 incurred by the entity for towing, storage, and sale, then to the

1 owner or to satisfy any liens of record or security interests of
2 record on the vessel in the order of their priority. If the sale is
3 for a sum less than the applicable charges, the foreclosing entity is
4 entitled to assert a claim for the deficiency against the vessel
5 owner. Nothing in this section prevents any lien holder or secured
6 party from asserting a claim for any deficiency owed the lien holder
7 or secured party. If more than one thousand dollars remains after the
8 satisfaction of amounts owed to the entity and to any owner or bona
9 fide security interest, then the foreclosing entity must remit the
10 moneys to the department of licensing for deposit in the derelict
11 vessel removal account established in RCW 79.100.100. A copy of the
12 forfeited vessel disposition report form identifying the vessel
13 resulting in any surplus shall accompany the remitted funds. Transfer
14 of ownership of the vessel after foreclosure must comply with RCW
15 79.100.150, when applicable. All personal property in the vessel not
16 claimed prior to foreclosure must be turned over to the law
17 enforcement agency that authorized the impoundment. The personal
18 property must be disposed of pursuant to chapter 63.32 or 63.40 RCW,
19 or as otherwise provided by law. Within fourteen days of the
20 completion of the foreclosure process of a vessel pursuant to this
21 subsection, the foreclosing entity shall send a forfeited vessel
22 disposition report, together with a copy of the vessel impound
23 authorization and inventory form and the notice of intent to
24 foreclose, to the department of licensing so that the department may
25 include documentation in the ownership records of the vessel. The
26 vessel disposition information sent to the department of licensing on
27 the forfeited vessel disposition report relieves the previous owner
28 of the vessel from any civil or criminal liability for the operation
29 of the vessel from the date of sale thereafter, and transfers full
30 liability for the vessel to the party to whom the vessel is
31 transferred by the foreclosing entity.

32 (13) Any individual or entity whose assistance has been requested
33 by an impounding officer who in good faith provides trailering,
34 towing, or secured or other type of moorage of a vessel impounded
35 pursuant to this section is not liable for any damage to or theft of
36 the vessel or its contents, or for damages for loss of use of the
37 vessel resulting from any act or omission in providing assistance
38 other than for acts or omissions constituting gross negligence or
39 willful or wanton misconduct, or for any damages arising from any act
40 or omission committed during the foreclosure process.

1 (14) If a law enforcement officer impounds and secures a vessel
2 pursuant to this section, the impounding officer and the government
3 agency employing the officer are not liable for any damage to or
4 theft of the vessel or its contents, or for damages for loss of use
5 of the vessel, or for any damages arising from any act or omission
6 committed during the foreclosure process.

7 (15) Any legal or registered owner seeking to redeem an impounded
8 vessel under this section has a right to a hearing in the district or
9 municipal court for the jurisdiction in which the vessel was
10 impounded to contest the validity of the impoundment. The district
11 court has jurisdiction to determine the issues involving all
12 impoundments including those authorized by the state or its agents,
13 unless the impoundment was authorized by municipal agents. The
14 municipal court has exclusive jurisdiction to determine the issues
15 involving impoundments authorized by agents of the municipality. Any
16 request for a hearing must be made in writing per the instructions
17 provided on the uniform vessel impound authorization and inventory
18 form and must be received by the appropriate court within ten
19 business days of the date that the vessel impound authorization and
20 inventory form was mailed to or served on the registered or legal
21 owner or owners of the impounded vessel. If the hearing request is
22 not received by the court within ten business days of the sending or
23 personal service of the notice of impoundment pursuant to subsection
24 (9) of this section, the right to a hearing is waived and the
25 registered owner is liable for any towing, storage, or other
26 impoundment charges permitted under this chapter. Upon receipt of a
27 timely hearing request, the court shall proceed to hear and determine
28 the validity of the impoundment.

29 (a) Within five days after the request for a hearing, the court
30 shall notify the operator of the impound facility, the registered and
31 legal owners of the vessel, and the officer or agency authorizing the
32 impound in writing of the hearing date and time.

33 (b) At the hearing, the petitioner may produce any relevant
34 evidence that is admissible under court rules to show that the
35 impoundment, towing, or storage fees charged were not proper. The
36 court may consider a written report made under oath by the officer
37 who authorized the impoundment in lieu of the officer's personal
38 appearance at the hearing.

39 (c) At the conclusion of the hearing, the court shall determine
40 whether the impoundment was proper, whether the towing or storage

1 fees charged were in compliance with the fees established in
2 subsection (10) of this section, and who is responsible for payment
3 of the fees. The court may not adjust fees or charges that are in
4 compliance with subsection (10) of this section.

5 (d) If the impoundment is found proper, the impoundment, towing,
6 and storage fees as permitted under this chapter together with court
7 costs must be assessed against the petitioner.

8 (e) If the impoundment is determined to be in violation of this
9 section, then the registered and legal owners of the vessel bear no
10 impoundment, towing, or storage fees, any security must be returned
11 or discharged as appropriate, and the agency that authorized the
12 impoundment is liable for any towing, storage, or other impoundment
13 fees permitted under this chapter. The court shall enter judgment in
14 favor of the moorage facility or vessel towing contractor against the
15 agency authorizing the impound for the impoundment, towing, and
16 storage fees incurred. In addition, the court shall enter judgment in
17 favor of the petitioner for the amount of the filing fee required by
18 law for the impound hearing petition. If an impoundment is determined
19 to be in violation of this section, the impounding officer and the
20 government agency employing the officer are not liable for damage to
21 or theft of the vessel or its contents, or damages for loss of use of
22 the vessel, if the impounding officer had reasonable suspicion to
23 believe that the operator of the vessel was operating the vessel
24 while under the influence of intoxicating liquor or any drug, was in
25 physical control of the vessel while under the influence of
26 intoxicating liquor or any drug, or was operating the vessel in a
27 reckless manner, or if the impounding officer otherwise acted
28 reasonably under the circumstances in acting to impound and secure
29 the vessel.

30 (f) If any judgment entered under this subsection is not paid
31 within fifteen days of notice in writing of its entry, the court
32 shall award reasonable attorneys' fees and costs against the
33 defendant in any action to enforce the judgment. Notice of entry of
34 judgment may be made by registered or certified mail, and proof of
35 mailing may be made by affidavit of the party mailing the notice.
36 Notice of the entry of the judgment must read essentially as follows:

37 TO:

1 YOU ARE HEREBY NOTIFIED JUDGMENT was
2 entered against you in the Court located at
3 in the sum of \$., in an action entitled, Case
4 No. YOU ARE FURTHER NOTIFIED that
5 attorneys' fees and costs will be awarded against you
6 under RCW if the judgment is not paid within 15
7 days of the date of this notice.

8 DATED this day of, (year)

9 Signature

10 Typed name and address of party mailing notice

11 (16) By September 30, 2017, the department of licensing in
12 collaboration with the commission shall create the following forms
13 for use in the enforcement of this section:

14 (a) A vessel impound authorization and inventory form. This form
15 must include sections for the impounding officer to record the
16 addresses of the registered and legal owners of the vessel and the
17 designated individual that will act on behalf of the impound
18 facility; and

19 (b) A forfeited vessel disposition report form.

20 (17) The definitions in this subsection apply throughout this
21 section unless the context clearly requires otherwise.

22 (a) "Impound" means to take and hold a vessel in legal custody.

23 (b) "Legal owner" means a person having a perfected security
24 interest or a registered owner of a vessel unencumbered by a security
25 interest.

26 (c) "Moorage facility" includes a private moorage facility as
27 defined in RCW 88.26.010, a moorage facility as defined in RCW
28 53.08.310, or a moorage facility owned or operated by the agency of
29 the arresting officer.

30 (d) "Registered owner" or "owner" means the person whose lawful
31 right of possession of a vessel has most recently been recorded with
32 the department of licensing.

33 (e) "Secure moorage" is in-water moorage or dry storage at a
34 moorage facility in a location specifically designated for the
35 moorage of vessels and in a location where access is controlled or
36 security is provided.

1 (f) "Vessel" includes any vessel as defined in RCW 79A.60.010 and
2 includes any associated trailer or towing device used to transport
3 the vessel if it is included in the impoundment.

Passed by the House April 17, 2017.

Passed by the Senate April 7, 2017.

Approved by the Governor May 8, 2017.

Filed in Office of Secretary of State May 8, 2017.

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