

CERTIFICATION OF ENROLLMENT  
**SECOND SUBSTITUTE SENATE BILL 5341**

53rd Legislature  
1994 Regular Session

Passed by the Senate February 10, 1994  
YEAS 0 NAYS 0

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**President of the Senate**

Passed by the House March 3, 1994  
YEAS 0 NAYS 0

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**Speaker of the  
House of Representatives**

Approved

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**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.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SECOND SUBSTITUTE SENATE BILL 5341**

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Passed Legislature - 1994 Regular Session

AS AMENDED BY THE HOUSE

**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.

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