

2 ESHB 1221 - S COMM AMD  
3 By Committee on Law & Justice

4 NOT ADOPTED 3/3/98

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that the license to  
8 drive a motor vehicle on the public highways is suspended or revoked in  
9 order to protect public safety following a driver's failure to comply  
10 with the laws of this state. Over six hundred persons are killed in  
11 traffic accidents in Washington annually, and more than eighty-four  
12 thousand persons are injured. It is estimated that of the three  
13 million four hundred thousand drivers' licenses issued to citizens of  
14 Washington, more than two hundred sixty thousand are suspended or  
15 revoked at any given time. Suspended drivers are more likely to be  
16 involved in causing traffic accidents, including fatal accidents, than  
17 properly licensed drivers, and pose a serious threat to the lives and  
18 property of Washington residents. Statistics show that suspended  
19 drivers are three times more likely to kill or seriously injure others  
20 in the commission of traffic felony offenses than are validly licensed  
21 drivers. In addition to not having a driver's license, most such  
22 drivers also lack required liability insurance, increasing the  
23 financial burden upon other citizens through uninsured losses and  
24 higher insurance costs for validly licensed drivers. Because of the  
25 threat posed by suspended drivers, all registered owners of motor  
26 vehicles in Washington have a duty to not allow their vehicles to be  
27 driven by a suspended driver.

28 Despite the existence of criminal penalties for driving with a  
29 suspended or revoked license, an estimated seventy-five percent of  
30 these drivers continue to drive anyway. Existing sanctions are not  
31 sufficient to deter or prevent persons with a suspended or revoked  
32 license from driving. It is common for suspended drivers to resume  
33 driving immediately after being stopped, cited, and released by a  
34 police officer and to continue to drive while a criminal prosecution  
35 for suspended driving is pending. More than half of all suspended  
36 drivers charged with the crime of driving while suspended or revoked

1 fail to appear for court hearings. Vehicle impoundment will provide an  
2 immediate consequence which will increase deterrence and reduce  
3 unlawful driving by preventing a suspended driver access to that  
4 vehicle. Vehicle impoundment will also provide an appropriate measure  
5 of accountability for registered owners who permit suspended drivers to  
6 drive their vehicles. Impoundment of vehicles driven by suspended  
7 drivers has been shown to reduce future driving while suspended or  
8 revoked offenses for up to two years afterwards, and the recidivism  
9 rate for drivers whose cars were not impounded was one hundred percent  
10 higher than for drivers whose cars were impounded. In order to  
11 adequately protect public safety and to enforce the state's driver  
12 licensing laws, it is necessary to authorize the impoundment of any  
13 vehicle when it is found to be operated by a driver with a suspended or  
14 revoked license, and to provide in certain circumstances for the  
15 forfeiture of such vehicles where the owner continues to drive despite  
16 having been previously convicted of the crime of driving with a  
17 suspended or revoked license in violation of RCW 46.20.342 and  
18 46.20.420. The impoundment or forfeiture of a vehicle operated in  
19 violation of RCW 46.20.342 or 46.20.420 is intended to be a civil in  
20 rem action against the vehicle in order to remove it from the public  
21 highways and reduce the risk posed to traffic safety by a vehicle  
22 accessible to a driver who is reasonably believed to have violated  
23 these laws.

24 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.20 RCW  
25 to read as follows:

26 (1) Notwithstanding RCW 46.55.113, whenever a motor vehicle is  
27 found to be operated by a person with a suspended or revoked driver's  
28 license or nonresident driving privileges, or while in a suspended or  
29 revoked status in violation of RCW 46.20.342 or 46.20.420, the vehicle  
30 is subject to impoundment, pursuant to applicable local ordinance or  
31 state agency rule, at the direction of a law enforcement officer.

32 (2) If a vehicle is impounded under this section because the  
33 operator is in violation of RCW 46.20.342(1)(c), the vehicle shall not  
34 be released until a person eligible to redeem it under RCW  
35 46.55.120(1)(a) satisfies the requirements of RCW 46.55.120(1)(b),  
36 including paying all towing, removal, and storage fees, notwithstanding  
37 the fact that the hold was ordered by a government agency. However, if  
38 the department's records show that the operator has been convicted of

1 a violation of RCW 46.20.342 or a similar local ordinance within the  
2 past five years, the vehicle may be held for up to fifteen days at the  
3 written direction of the agency ordering the vehicle impounded.

4 (3) If a vehicle is impounded under this section because the  
5 operator is in violation of RCW 46.20.342(1) (a) or (b), the vehicle  
6 may be held for up to fifteen days and must not be released until a  
7 person eligible to redeem it under RCW 46.55.120(1)(a) satisfies the  
8 requirements of RCW 46.55.120(1)(b), including paying all towing,  
9 removal, and storage fees, notwithstanding the fact that the hold was  
10 ordered by a government agency. However, if the department's records  
11 show that the operator has been convicted of a violation of RCW  
12 46.20.342(1) (a) or (b) or a similar local ordinance within the past  
13 five years and the operator has a financial interest in the vehicle,  
14 the vehicle is subject to forfeiture unless an applicable state agency  
15 rule or local ordinance prohibits forfeiture on the basis of economic  
16 or personal hardship to the spouse of the operator, taking into  
17 consideration public safety factors, including the operator's criminal  
18 history and driving record. If the vehicle is forfeited, then the  
19 forfeiting agency shall pay all the impoundment, towing, and storage  
20 fees for the vehicle and shall be entitled to recover those fees from  
21 the operator of the forfeited vehicle, including any attorneys' fees,  
22 costs of collection, and interest at the statutory rate for judgment  
23 interest from the date of payment by the forfeiting agency of such  
24 fees.

25 (4) A forfeiture proceeding is commenced by the law enforcement  
26 agency causing notice of the intended forfeiture of the seized vehicle  
27 to be served not less than ten days after seizure on the registered tow  
28 truck operator which impounded the vehicle, the owner of the vehicle  
29 seized, the person in charge of the vehicle when it was seized, and any  
30 person having a known right or interest in the vehicle, including a  
31 community property interest. The notice may be served by any method  
32 authorized by law or court rule, including, but not limited to, service  
33 by certified mail with return receipt requested. Service by mail is  
34 complete upon mailing. Notice in the case of a vehicle subject to a  
35 security interest that has been perfected on a certificate of title  
36 must be made by service upon the secured party or the secured party's  
37 assignee at the address shown on the financing statement, the  
38 certificate of title, or the transitional ownership record. Once the  
39 registered tow truck operator which impounded the vehicle receives

1 notice, the vehicle must not be released except upon written order of  
2 the chief law enforcement officer of the agency directing the  
3 impoundment or his or her designee, an administrative law judge, or a  
4 court.

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

9 (6) If a 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 law  
12 enforcement agency shall give the person or persons a reasonable  
13 opportunity to be heard as to the claim or right. At the hearing, if  
14 the seizing agency proves by a preponderance of the evidence that the  
15 vehicle was operated by a person in violation of RCW 46.61.502 or  
16 46.61.504, and that person has a prior offense as defined by RCW  
17 46.61.5055(8), and has an ownership interest in the vehicle, then the  
18 vehicle shall be forfeited. The hearing shall be before the chief law  
19 enforcement officer of the seizing agency or the chief law enforcement  
20 officer's designee, except where the seizing agency is a state agency  
21 as defined in RCW 34.12.020, the hearing shall be before the chief law  
22 enforcement officer of the seizing agency or an administrative law  
23 judge appointed under chapter 34.12 RCW, except that any person  
24 asserting a claim or right may remove the matter to a court of  
25 competent jurisdiction. Removal may only be accomplished according to  
26 the rules of civil procedure. The person seeking removal of the matter  
27 must serve process against the state, county, political subdivision, or  
28 municipality that operates the seizing agency, and any other party of  
29 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-  
30 five days after the person seeking removal has notified the seizing law  
31 enforcement agency of the person's claim of ownership or right to  
32 possession. The court to which the matter is to be removed shall be  
33 the district court when the aggregate value of the vehicle is within  
34 the jurisdictional limit set forth in RCW 3.66.020. A hearing before  
35 the seizing agency and any appeal therefrom shall be under Title 34  
36 RCW. In a court hearing between two or more claimants to the vehicle  
37 involved, the prevailing party shall be entitled to a judgment for  
38 costs and reasonable attorneys' fees. The burden of producing evidence  
39 shall be upon the person claiming to be the legal owner or the person

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

6 (7) When a vehicle is forfeited under this chapter the seizing law  
7 enforcement agency may sell the vehicle, retain it for official use, or  
8 upon application by a law enforcement agency of this state release the  
9 vehicle to that agency for the exclusive use of enforcing this title;  
10 provided, however, that the agency shall first satisfy any bona fide  
11 security interest to which the vehicle is subject and provided further  
12 that where the ownership interest subject to forfeiture is bona fide  
13 community property, the value of the undivided community property  
14 interest of the spouse who was not operating the vehicle in violation  
15 of RCW 46.61.502 or 46.61.504 shall not be forfeited nor subject to  
16 reduction for towing, removal, or storage charges associated with the  
17 forfeiture action. The value of the undivided community property  
18 interest not subject to forfeiture or reduction is one-half of the  
19 value of the vehicle as defined in subsection (14) of this section  
20 after deducting the cost of satisfying any bona fide security interest.

21 (8) When a vehicle is forfeited, the seizing agency shall keep a  
22 record indicating the identity of the prior owner, if known, a  
23 description of the vehicle, the disposition of the vehicle, the value  
24 of the vehicle at the time of seizure, and the amount of proceeds  
25 realized from disposition of the vehicle.

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

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

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

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

1 (13) The net proceeds of a forfeited vehicle is the value of the  
2 forfeitable interest in the vehicle after deducting the cost of  
3 satisfying a bona fide community property interest and security  
4 interest to which the vehicle is subject at the time of seizure and all  
5 towing, removal, and storage fees; and in the case of a sold vehicle,  
6 after deducting the cost of sale, including reasonable fees or  
7 commissions paid to independent selling agents.

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

16 (15) Notwithstanding RCW 46.52.120(2), in any hearing under RCW  
17 46.55.120 to contest the validity of the impoundment or under this  
18 section to contest the validity of the forfeiture, an abstract of the  
19 person's driving record may be admitted as and is prima facie evidence  
20 of the status of the person's driving privilege and that the person was  
21 convicted of each offense shown by the abstract. In addition, a  
22 certified vehicle registration of the vehicle sought to be forfeited  
23 shall be admissible without further evidentiary foundation.

24 (16) No determination of facts made by a person conducting a  
25 hearing under this section or RCW 46.55.120 shall have any collateral  
26 estoppel effect on a subsequent criminal prosecution and shall not  
27 preclude litigation of those same facts in a subsequent criminal  
28 prosecution.

29 **Sec. 3.** RCW 46.55.105 and 1995 c 219 s 4 are each amended to read  
30 as follows:

31 (1) The abandonment of any vehicle creates a prima facie  
32 presumption that the last registered owner of record is responsible for  
33 the abandonment and is liable for costs incurred in removing, storing,  
34 and disposing of the abandoned vehicle, less amounts realized at  
35 auction.

36 (2) If an unauthorized vehicle is found abandoned under subsection  
37 (1) of this section and removed at the direction of law enforcement,  
38 the last registered owner of record is guilty of a traffic infraction,

1 unless the vehicle is redeemed as provided in RCW 46.55.120. In  
2 addition to any other monetary penalty payable under chapter 46.63 RCW,  
3 the court shall not consider all monetary penalties as having been paid  
4 until the court is satisfied that the person found to have committed  
5 the infraction has made restitution in the amount of the deficiency  
6 remaining after disposal of the vehicle under RCW 46.55.140.

7 (3) A vehicle theft report filed with a law enforcement agency  
8 relieves the last registered owner of liability under subsection (2) of  
9 this section for failure to redeem the vehicle. However, the last  
10 registered owner remains liable for the costs incurred in removing,  
11 storing, and disposing of the abandoned vehicle under subsection (1) of  
12 this section. Nothing in this section limits in any way the registered  
13 owner's rights in a civil action or as restitution in a criminal action  
14 against a person responsible for the theft of the vehicle.

15 (4) Properly filing a report of sale or transfer regarding the  
16 vehicle involved in accordance with RCW 46.12.101(1) (~~or a vehicle~~  
17 ~~theft report filed with a law enforcement agency~~) relieves the last  
18 registered owner of liability under subsections (1) and (2) of this  
19 section. If the date of sale as indicated on the report of sale is on  
20 or before the date of impoundment, the buyer identified on the latest  
21 properly filed report of sale with the department is assumed liable for  
22 the costs incurred in removing, storing, and disposing of the abandoned  
23 vehicle, less amounts realized at auction. If the date of sale is  
24 after the date of impoundment, the previous registered owner is assumed  
25 to be liable for such costs. A licensed vehicle dealer is not liable  
26 under subsections (1) and (2) of this section if the dealer, as  
27 transferee or assignee of the last registered owner of the vehicle  
28 involved, has complied with the requirements of RCW 46.70.122 upon  
29 selling or otherwise disposing of the vehicle, or if the dealer has  
30 timely filed a transitional ownership record or report of sale under  
31 section 13 of this act. In that case the person to whom the licensed  
32 vehicle dealer has sold or transferred the vehicle is assumed liable  
33 for the costs incurred in removing, storing, and disposing of the  
34 abandoned vehicle, less amounts realized at auction.

35 ~~((+4))~~ (5) For the purposes of reporting notices of traffic  
36 infraction to the department under RCW 46.20.270 and 46.52.100, and for  
37 purposes of reporting notices of failure to appear, respond, or comply  
38 regarding a notice of traffic infraction to the department under RCW

1 46.63.070(5), a traffic infraction under subsection (2) of this section  
2 is not considered to be a standing, stopping, or parking violation.  
3 ~~((+5))~~ (6) A notice of infraction for a violation of this section  
4 may be filed with a court of limited jurisdiction organized under Title  
5 3, 35, or 35A RCW, or with a violations bureau subject to the court's  
6 jurisdiction.

7 **Sec. 4.** RCW 46.55.110 and 1995 c 360 s 6 are each amended to read  
8 as follows:

9 (1) When an unauthorized vehicle is impounded, the impounding  
10 towing operator shall notify the legal and registered owners of the  
11 impoundment of the unauthorized vehicle and the owners of any other  
12 items of personal property registered or titled with the department.  
13 The notification shall be sent by first-class mail within twenty-four  
14 hours after the impoundment to the last known registered and legal  
15 owners of the vehicle, and the owners of any other items of personal  
16 property registered or titled with the department, as provided by the  
17 law enforcement agency, and shall inform the owners of the identity of  
18 the person or agency authorizing the impound. The notification shall  
19 include the name of the impounding tow firm, its address, and telephone  
20 number. The notice shall also include the location, time of the  
21 impound, and by whose authority the vehicle was impounded. The notice  
22 shall also include the written notice of the right of redemption and  
23 opportunity for a hearing to contest the validity of the impoundment  
24 pursuant to RCW 46.55.120.

25 (2) In the case of an abandoned vehicle, or other item of personal  
26 property registered or titled with the department, within twenty-four  
27 hours after receiving information on the owners from the department  
28 through the abandoned vehicle report, the tow truck operator shall send  
29 by certified mail, with return receipt requested, a notice of custody  
30 and sale to the legal and registered owners.

31 (3) If the date on which a notice required by subsection (2) of  
32 this section is to be mailed falls upon a Saturday, Sunday, or a postal  
33 holiday, the notice may be mailed on the next day that is neither a  
34 Saturday, Sunday, nor a postal holiday.

35 (4) No notices need be sent to the legal or registered owners of an  
36 impounded vehicle or other item of personal property registered or  
37 titled with the department, if the vehicle or personal property has  
38 been redeemed.



1       **Sec. 5.** RCW 46.55.113 and 1997 c 66 s 7 are each amended to read  
2 as follows:

3       Whenever the driver of a vehicle is arrested for a violation of RCW  
4 46.61.502 or 46.61.504, the arresting officer may take custody of the  
5 vehicle and provide for its prompt removal to a place of safety. In  
6 addition, a police officer may take custody of a vehicle and provide  
7 for its prompt removal to a place of safety under any of the following  
8 circumstances:

9       (1) Whenever a police officer finds a vehicle standing upon the  
10 roadway in violation of any of the provisions of RCW 46.61.560, the  
11 officer may provide for the removal of the vehicle or require the  
12 driver or other person in charge of the vehicle to move the vehicle to  
13 a position off the roadway;

14       (2) Whenever a police officer finds a vehicle unattended upon a  
15 highway where the vehicle constitutes an obstruction to traffic or  
16 jeopardizes public safety;

17       (3) Whenever a police officer finds an unattended vehicle at the  
18 scene of an accident or when the driver of a vehicle involved in an  
19 accident is physically or mentally incapable of deciding upon steps to  
20 be taken to protect his or her property;

21       (4) Whenever the driver of a vehicle is arrested and taken into  
22 custody by a police officer;

23       (5) Whenever a police officer discovers a vehicle that the officer  
24 determines to be a stolen vehicle;

25       (6) Whenever a vehicle without a special license plate, card, or  
26 decal indicating that the vehicle is being used to transport a disabled  
27 person under RCW 46.16.381 is parked in a stall or space clearly and  
28 conspicuously marked under RCW 46.61.581 which space is provided on  
29 private property without charge or on public property;

30       (7) Upon determining that a person is operating a motor vehicle  
31 without a valid driver's license in violation of RCW 46.20.005 or with  
32 a license that has been expired for ninety days or more(~~(, or with a~~  
33 ~~suspended or revoked license in violation of RCW 46.20.342 or~~  
34 ~~46.20.420))~~).

35       Nothing in this section may derogate from the powers of police  
36 officers under the common law. For the purposes of this section, a  
37 place of safety may include the business location of a registered tow  
38 truck operator.

1       **Sec. 6.** RCW 46.55.120 and 1996 c 89 s 2 are each amended to read  
2 as follows:

3       (1) Vehicles or other items of personal property registered or  
4 titled with the department that are impounded by registered tow truck  
5 operators pursuant to RCW 46.55.080, 46.55.085, (~~(or)~~) 46.55.113, or  
6 section 2 of this act may be redeemed only under the following  
7 circumstances:

8       (a) Only the legal owner, the registered owner, a person authorized  
9 in writing by the registered owner or the vehicle's insurer, a person  
10 who is determined and verified by the operator to have the permission  
11 of the registered owner of the vehicle or other item of personal  
12 property registered or titled with the department, or one who has  
13 purchased a vehicle or item of personal property registered or titled  
14 with the department from the registered owner who produces proof of  
15 ownership or written authorization and signs a receipt therefor, may  
16 redeem an impounded vehicle or items of personal property registered or  
17 titled with the department. In addition, a person redeeming a vehicle  
18 impounded under section 2 of this act must prior to redemption  
19 establish with the agency that ordered the vehicle impounded that he or  
20 she has a valid driver's license and is in compliance with RCW  
21 46.30.020. A vehicle impounded under section 2 of this act can only be  
22 released pursuant to a written order from the agency that ordered the  
23 vehicle impounded or pursuant to a provision of a state agency rule or  
24 local ordinance authorizing release on the basis of economic or  
25 personal hardship to the spouse of the operator, taking into  
26 consideration public safety factors, including the operator's criminal  
27 history and driving record.

28       (b) The vehicle or other item of personal property registered or  
29 titled with the department shall be released upon the presentation to  
30 any person having custody of the vehicle of commercially reasonable  
31 tender sufficient to cover the costs of towing, storage, or other  
32 services rendered during the course of towing, removing, impounding, or  
33 storing any such vehicle. In addition, if a vehicle is impounded under  
34 section 2 of this act and was being operated by the registered owner  
35 when it was impounded, it must not be released to any person until the  
36 registered owner establishes with the agency that ordered the vehicle  
37 impounded that any penalties, fines, or forfeitures owed by him or her  
38 have been satisfied. Commercially reasonable tender shall include,  
39 without limitation, cash, major bank credit cards, or personal checks

1 drawn on in-state banks if accompanied by two pieces of valid  
2 identification, one of which may be required by the operator to have a  
3 photograph. If the towing firm can determine through the customer's  
4 bank or a check verification service that the presented check would not  
5 be paid by the bank or guaranteed by the service, the towing firm may  
6 refuse to accept the check. Any person who stops payment on a personal  
7 check or credit card, or does not make restitution within ten days from  
8 the date a check becomes insufficient due to lack of funds, to a towing  
9 firm that has provided a service pursuant to this section or in any  
10 other manner defrauds the towing firm in connection with services  
11 rendered pursuant to this section shall be liable for damages in the  
12 amount of twice the towing and storage fees, plus costs and reasonable  
13 attorney's fees.

14 (2)(a) The registered tow truck operator shall give to each person  
15 who seeks to redeem an impounded vehicle, or item of personal property  
16 registered or titled with the department, written notice of the right  
17 of redemption and opportunity for a hearing, which notice shall be  
18 accompanied by a form to be used for requesting a hearing, the name of  
19 the person or agency authorizing the impound, and a copy of the towing  
20 and storage invoice. The registered tow truck operator shall maintain  
21 a record evidenced by the redeeming person's signature that such  
22 notification was provided.

23 (b) Any person seeking to redeem an impounded vehicle under this  
24 section has a right to a hearing in the district or municipal court for  
25 the jurisdiction in which the vehicle was impounded to contest the  
26 validity of the impoundment or the amount of towing and storage  
27 charges. The district court has jurisdiction to determine the issues  
28 involving all impoundments including those authorized by the state or  
29 its agents. The municipal court has jurisdiction to determine the  
30 issues involving impoundments authorized by agents of the municipality.  
31 Any request for a hearing shall be made in writing on the form provided  
32 for that purpose and must be received by the district or municipal  
33 court within ten days of the date the opportunity was provided for in  
34 subsection (2)(a) of this section. At the time of the filing of the  
35 hearing request, the petitioner shall pay to the court clerk a filing  
36 fee in the same amount required for the filing of a suit in the small  
37 claims department of a district court. If the hearing request is not  
38 received by the district or municipal court within the ten-day period,  
39 the right to a hearing is waived and the registered owner is liable for

1 any towing, storage, or other impoundment charges permitted under this  
2 chapter. Upon receipt of a timely hearing request, the district or  
3 municipal court shall proceed to hear and determine the validity of the  
4 impoundment.

5 (3)(a) The district or municipal court, within five days after the  
6 request for a hearing, shall notify the registered tow truck operator,  
7 the person requesting the hearing if not the owner, the registered and  
8 legal owners of the vehicle or other item of personal property  
9 registered or titled with the department, and the person or agency  
10 authorizing the impound in writing of the hearing date and time.

11 (b) At the hearing, the person or persons requesting the hearing  
12 may produce any relevant evidence to show that the impoundment, towing,  
13 or storage fees charged were not proper. The court may consider a  
14 written report made under oath by the officer who authorized the  
15 impoundment in lieu of the officer's personal appearance at the  
16 hearing.

17 (c) At the conclusion of the hearing, the district or municipal  
18 court shall determine whether the impoundment was proper, whether the  
19 towing or storage fees charged were in compliance with the posted  
20 rates, and who is responsible for payment of the fees. The court may  
21 not adjust fees or charges that are in compliance with the posted or  
22 contracted rates.

23 (d) If the impoundment is found proper, the impoundment, towing,  
24 and storage fees as permitted under this chapter together with court  
25 costs shall be assessed against the person or persons requesting the  
26 hearing, unless the operator did not have a signed and valid  
27 impoundment authorization from a private property owner or an  
28 authorized agent.

29 (e) If the impoundment is determined to be in violation of this  
30 chapter, then the registered and legal owners of the vehicle or other  
31 item of personal property registered or titled with the department  
32 shall bear no impoundment, towing, or storage fees, and any security  
33 shall be returned or discharged as appropriate, and the person or  
34 agency who authorized the impoundment shall be liable for any towing,  
35 storage, or other impoundment fees permitted under this chapter. The  
36 court shall enter judgment in favor of the registered tow truck  
37 operator against the person or agency authorizing the impound for the  
38 impoundment, towing, and storage fees paid. In addition, the court  
39 shall enter judgment in favor of the registered and legal owners of the

1 vehicle, or other item of personal property registered or titled with  
2 the department, for the amount of the filing fee required by law for  
3 the impound hearing petition as well as reasonable damages for loss of  
4 the use of the vehicle during the time the same was impounded, for not  
5 less than fifty dollars per day, against the person or agency  
6 authorizing the impound. However, if an impoundment under section 2 of  
7 this act is determined to be in violation of this chapter, then the law  
8 enforcement officer directing the impoundment and the government  
9 employing the officer are not liable for damages if the officer relied  
10 in good faith and without gross negligence on the records of the  
11 department in ascertaining that the operator of the vehicle had a  
12 suspended or revoked driver's license. If any judgment entered is not  
13 paid within fifteen days of notice in writing of its entry, the court  
14 shall award reasonable attorneys' fees and costs against the defendant  
15 in any action to enforce the judgment. Notice of entry of judgment may  
16 be made by registered or certified mail, and proof of mailing may be  
17 made by affidavit of the party mailing the notice. Notice of the entry  
18 of the judgment shall read essentially as follows:

19 TO: . . . . .  
20 YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the  
21 . . . . . Court located at . . . . . in the sum of  
22 \$. . . . ., in an action entitled . . . . ., Case No.  
23 . . . . YOU ARE FURTHER NOTIFIED that attorneys fees and costs  
24 will be awarded against you under RCW . . . if the judgment is  
25 not paid within 15 days of the date of this notice.  
26 DATED this . . . . day of . . . . ., 19. . .  
27 Signature . . . . .  
28 Typed name and address  
29 of party mailing notice

30 (4) Any impounded abandoned vehicle or item of personal property  
31 registered or titled with the department that is not redeemed within  
32 fifteen days of mailing of the notice of custody and sale as required  
33 by RCW 46.55.110(2) shall be sold at public auction in accordance with  
34 all the provisions and subject to all the conditions of RCW 46.55.130.  
35 A vehicle or item of personal property registered or titled with the  
36 department may be redeemed at any time before the start of the auction  
37 upon payment of the applicable towing and storage fees.

1       **Sec. 7.** RCW 46.55.130 and 1989 c 111 s 12 are each amended to read  
2 as follows:

3       (1) If, after the expiration of fifteen days from the date of  
4 mailing of notice of custody and sale required in RCW 46.55.110(2) to  
5 the registered and legal owners, the vehicle remains unclaimed and has  
6 not been listed as a stolen vehicle, then the registered tow truck  
7 operator having custody of the vehicle shall conduct a sale of the  
8 vehicle at public auction after having first published a notice of the  
9 date, place, and time of the auction in a newspaper of general  
10 circulation in the county in which the vehicle is located not less than  
11 three days and no more than ten days before the date of the auction.  
12 The notice shall contain a description of the vehicle including the  
13 make, model, year, and license number and a notification that a three-  
14 hour public viewing period will be available before the auction. The  
15 auction shall be held during daylight hours of a normal business day.

16       (2) The following procedures are required in any public auction of  
17 such abandoned vehicles:

18       (a) The auction shall be held in such a manner that all persons  
19 present are given an equal time and opportunity to bid;

20       (b) All bidders must be present at the time of auction unless they  
21 have submitted to the registered tow truck operator, who may or may not  
22 choose to use the preauction bid method, a written bid on a specific  
23 vehicle. Written bids may be submitted up to five days before the  
24 auction and shall clearly state which vehicle is being bid upon, the  
25 amount of the bid, and who is submitting the bid;

26       (c) The open bid process, including all written bids, shall be used  
27 so that everyone knows the dollar value that must be exceeded;

28       (d) The highest two bids received shall be recorded in written form  
29 and shall include the name, address, and telephone number of each such  
30 bidder;

31       (e) In case the high bidder defaults, the next bidder has the right  
32 to purchase the vehicle for the amount of his or her bid;

33       (f) The successful bidder shall apply for title within fifteen  
34 days;

35       (g) The registered tow truck operator shall post a copy of the  
36 auction procedure at the bidding site. If the bidding site is  
37 different from the licensed office location, the operator shall post a  
38 clearly visible sign at the office location that describes in detail  
39 where the auction will be held. At the bidding site a copy of the

1 newspaper advertisement that lists the vehicles for sale shall be  
2 posted;

3 (h) All surplus moneys derived from the auction after satisfaction  
4 of the registered tow truck operator's lien shall be remitted within  
5 thirty days to the department for deposit in the state motor vehicle  
6 fund. A report identifying the vehicles resulting in any surplus shall  
7 accompany the remitted funds. If the director subsequently receives a  
8 valid claim from the registered vehicle owner of record as determined  
9 by the department within one year from the date of the auction, the  
10 surplus moneys shall be remitted to such owner;

11 (i) If an operator receives no bid, or if the operator is the  
12 successful bidder at auction, the operator shall, within (~~thirty~~)  
13 forty-five days sell the vehicle to a licensed vehicle wrecker, hulk  
14 hauler, or scrap processor by use of the abandoned vehicle report-  
15 affidavit of sale, or the operator shall apply for title to the  
16 vehicle.

17 (3) In no case may an operator hold a vehicle for longer than  
18 ninety days without holding an auction on the vehicle, except for  
19 vehicles that are under a police or judicial hold.

20 (4)(a) In no case may the accumulation of storage charges exceed  
21 fifteen days from the date of receipt of the information by the  
22 operator from the department as provided by RCW 46.55.110(2).

23 (b) The failure of the registered tow truck operator to comply with  
24 the time limits provided in this chapter limits the accumulation of  
25 storage charges to five days except where delay is unavoidable.  
26 Providing incorrect or incomplete identifying information to the  
27 department in the abandoned vehicle report shall be considered a  
28 failure to comply with these time limits if correct information is  
29 available.

30 NEW SECTION. **Sec. 8.** A new section is added to chapter 46.55 RCW  
31 to read as follows:

32 In any administrative or judicial proceeding involving a forfeiture  
33 of a vehicle under section 2 of this act, the chief law enforcement  
34 officer or court shall provide for the protection of a bona fide  
35 community property interest in the vehicle of a person other than the  
36 person whose operation of the vehicle with a suspended or revoked  
37 license led to the forfeiture.

1       **Sec. 9.** RCW 46.55.010 and 1994 c 176 s 1 are each amended to read  
2 as follows:

3       The definitions set forth in this section apply throughout this  
4 chapter:

5       (1) "Abandoned vehicle" means a vehicle that a registered tow truck  
6 operator has impounded and held in the operator's possession for  
7 (~~ninety-six~~) one hundred twenty consecutive hours.

8       (2) "Abandoned vehicle report" means the document prescribed by the  
9 state that the towing operator forwards to the department after a  
10 vehicle has become abandoned.

11       (3) "Impound" means to take and hold a vehicle in legal custody.  
12 There are two types of impounds«public and private.

13       (a) "Public impound" means that the vehicle has been impounded at  
14 the direction of a law enforcement officer or by a public official  
15 having jurisdiction over the public property upon which the vehicle was  
16 located.

17       (b) "Private impound" means that the vehicle has been impounded at  
18 the direction of a person having control or possession of the private  
19 property upon which the vehicle was located.

20       (4) "Junk vehicle" means a vehicle certified under RCW 46.55.230 as  
21 meeting at least three of the following requirements:

22       (a) Is three years old or older;

23       (b) Is extensively damaged, such damage including but not limited  
24 to any of the following: A broken window or windshield, or missing  
25 wheels, tires, motor, or transmission;

26       (c) Is apparently inoperable;

27       (d) Has an approximate fair market value equal only to the  
28 approximate value of the scrap in it.

29       (5) "Master log" means the document or an electronic facsimile  
30 prescribed by the department and the Washington state patrol in which  
31 an operator records transactions involving impounded vehicles.

32       (6) "Registered tow truck operator" or "operator" means any person  
33 who engages in the impounding, transporting, or storage of unauthorized  
34 vehicles or the disposal of abandoned vehicles.

35       (7) "Residential property" means property that has no more than  
36 four living units located on it.

37       (8) "Tow truck" means a motor vehicle that is equipped for and used  
38 in the business of towing vehicles with equipment as approved by the  
39 state patrol.



1 (9) "Tow truck number" means the number issued by the department to  
2 tow trucks used by a registered tow truck operator in the state of  
3 Washington.

4 (10) "Tow truck permit" means the permit issued annually by the  
5 department that has the classification of service the tow truck may  
6 provide stamped upon it.

7 (11) "Tow truck service" means the transporting upon the public  
8 streets and highways of this state of vehicles, together with personal  
9 effects and cargo, by a tow truck of a registered operator.

10 (12) "Unauthorized vehicle" means a vehicle that is subject to  
11 impoundment after being left unattended in one of the following public  
12 or private locations for the indicated period of time:

13 Subject to removal after:

14 (a) Public locations:

15 (i) Constituting an accident or a traffic hazard as  
16 defined in RCW 46.55.113 . . . . . Immediately

17 (ii) On a highway and tagged as described in RCW  
18 46.55.085 . . . . . 24 hours

19 (iii) In a publicly owned or controlled parking facility,  
20 properly posted under RCW  
21 46.55.070 . . . . . Immediately

22 (b) Private locations:

23 (i) On residential property . . . . . Immediately

24 (ii) On private, nonresidential property, properly  
25 posted under RCW 46.55.070 . . . . . Immediately

26 (iii) On private, nonresidential property,  
27 not posted . . . . . 24 hours

28 **Sec. 10.** RCW 46.55.100 and 1995 c 360 s 5 are each amended to read  
29 as follows:

30 (1) At the time of impoundment the registered tow truck operator  
31 providing the towing service shall give immediate notification, by  
32 telephone or radio, to a law enforcement agency having jurisdiction who  
33 shall maintain a log of such reports. A law enforcement agency, or a  
34 private communication center acting on behalf of a law enforcement  
35 agency, shall within six to twelve hours of the impoundment, provide to  
36 a requesting operator the name and address of the legal and registered  
37 owners of the vehicle, and the registered owner of any personal

1 property registered or titled with the department that is attached to  
2 or contained in or on the impounded vehicle, the vehicle identification  
3 number, and any other necessary, pertinent information. The initial  
4 notice of impoundment shall be followed by a written or electronic  
5 facsimile notice within twenty-four hours. In the case of a vehicle  
6 from another state, time requirements of this subsection do not apply  
7 until the requesting law enforcement agency in this state receives the  
8 information.

9 (2) The operator shall immediately send an abandoned vehicle report  
10 to the department for any vehicle, and for any items of personal  
11 property registered or titled with the department, that are in the  
12 operator's possession after the (~~ninety-six~~) one hundred twenty hour  
13 abandonment period. Such report need not be sent when the impoundment  
14 is pursuant to a writ, court order, or police hold. The owner  
15 notification and abandonment process shall be initiated by the  
16 registered tow truck operator immediately following notification by a  
17 court or law enforcement officer that the writ, court order, or police  
18 hold is no longer in effect.

19 (3) Following the submittal of an abandoned vehicle report, the  
20 department shall provide the registered tow truck operator with owner  
21 information within seventy-two hours.

22 (4) Within (~~fifteen~~) fourteen days of the sale of an abandoned  
23 vehicle at public auction, the towing operator shall send a copy of the  
24 abandoned vehicle report showing the disposition of the abandoned  
25 vehicle and any other items of personal property registered or titled  
26 with the department to the crime information center of the Washington  
27 state patrol.

28 (5) If the operator sends an abandoned vehicle report to the  
29 department and the department finds no owner information, an operator  
30 may proceed with an inspection of the vehicle and any other items of  
31 personal property registered or titled with the department to determine  
32 whether owner identification is within the vehicle.

33 (6) If the operator finds no owner identification, the operator  
34 shall immediately notify the appropriate law enforcement agency, which  
35 shall search the vehicle and any other items of personal property  
36 registered or titled with the department for the vehicle identification  
37 number or other appropriate identification numbers and check the  
38 necessary records to determine the vehicle's or other property's  
39 owners.

1       **Sec. 11.** RCW 46.12.095 and 1969 ex.s. c 170 s 16 are each amended  
2 to read as follows:

3       A security interest in a vehicle other than one held as inventory  
4 by a manufacturer or a dealer and for which a certificate of ownership  
5 is required is perfected only by compliance with the requirements of  
6 section 13 of this act under the circumstances provided for therein or  
7 by compliance with the requirements of this section:

8       (1) A security interest is perfected (~~(only)~~) by the department's  
9 receipt of: (a) The existing certificate, if any, and (b) an  
10 application for a certificate of ownership containing the name and  
11 address of the secured party, and (c) tender of the required fee.

12       (2) It is perfected as of the time of its creation: (a) If the  
13 papers and fee referred to in (~~the preceding~~) subsection (1) of this  
14 section are received by this department within (~~eight department~~  
15 business)) twenty calendar days (~~exclusive~~) of the day on which the  
16 security agreement was created; or (b) if the secured party's name and  
17 address appear on the outstanding certificate of ownership; otherwise,  
18 as of the date on which the department has received the papers and fee  
19 required in subsection (1) of this section.

20       (3) If a vehicle is subject to a security interest when brought  
21 into this state, perfection of the security interest is determined by  
22 the law of the jurisdiction where the vehicle was when the security  
23 interest was attached, subject to the following:

24       (a) If the security interest was perfected under the law of the  
25 jurisdiction where the vehicle was when the security interest was  
26 attached, the following rules apply:

27       (b) If the name of the secured party is shown on the existing  
28 certificate of ownership issued by that jurisdiction, the security  
29 interest continues perfected in this state. The name of the secured  
30 party shall be shown on the certificate of ownership issued for the  
31 vehicle by this state. The security interest continues perfected in  
32 this state upon the issuance of such ownership certificate.

33       (c) If the security interest was not perfected under the law of the  
34 jurisdiction where the vehicle was when the security interest was  
35 attached, it may be perfected in this state; in that case, perfection  
36 dates from the time of perfection in this state.

37       **Sec. 12.** RCW 46.12.101 and 1991 c 339 s 19 are each amended to  
38 read as follows:

1 A transfer of ownership in a motor vehicle is perfected by  
2 compliance with the requirements of this section.

3 (1) If an owner transfers his or her interest in a vehicle, other  
4 than by the creation, deletion, or change of a security interest, the  
5 owner shall, at the time of the delivery of the vehicle, execute an  
6 assignment to the transferee and provide an odometer disclosure  
7 statement under RCW 46.12.124 on the certificate of ownership or as the  
8 department otherwise prescribes, and cause the certificate and  
9 assignment to be transmitted to the transferee. (~~Within five days,~~  
10 ~~excluding Saturdays, Sundays, and state and federal holidays,~~) The  
11 owner shall notify the department or its agents or subagents, in  
12 writing, on the appropriate form, of the date of the sale or transfer,  
13 the name and address of the owner and of the transferee, the  
14 transferee's driver's license number if available, and such description  
15 of the vehicle, including the vehicle identification number, the  
16 license plate number, or both, as may be required in the appropriate  
17 form provided or approved for that purpose by the department. The  
18 report of sale will be deemed properly filed if all information  
19 required in this section is provided on the form and includes a  
20 department-authorized notation that the document was received by the  
21 department, its agents, or subagents on or before the fifth day after  
22 the sale of the vehicle, excluding Saturdays, Sundays, and state and  
23 federal holidays. Agents and subagents shall immediately  
24 electronically transmit the seller's report of sale to the department.  
25 Reports of sale processed and recorded by the department's agents or  
26 subagents may be subject to fees as specified in RCW 46.01.140 (4)(a)  
27 or (5)(b).

28 (2) The requirements of subsection (1) of this section to provide  
29 an odometer disclosure statement apply to the transfer of vehicles held  
30 for lease when transferred to a lessee and then to the lessor at the  
31 end of the leasehold and to vehicles held in a fleet when transferred  
32 to a purchaser.

33 (3) Except as provided in RCW (~~46.12.120~~) 46.70.122 the  
34 transferee shall within fifteen days after delivery to the transferee  
35 of the vehicle, execute the application for a new certificate of  
36 ownership in the same space provided therefor on the certificate or as  
37 the department prescribes, and cause the certificates and application  
38 to be transmitted to the department.

1 (4) Upon request of the owner or transferee, a secured party in  
2 possession of the certificate of ownership shall, unless the transfer  
3 was a breach of its security agreement, either deliver the certificate  
4 to the transferee for transmission to the department or, when the  
5 secured party receives the owner's assignment from the transferee, it  
6 shall transmit the transferee's application for a new certificate, the  
7 existing certificate, and the required fee to the department.  
8 Compliance with this section does not affect the rights of the secured  
9 party.

10 (5) If a security interest is reserved or created at the time of  
11 the transfer, the certificate of ownership shall be retained by or  
12 delivered to the person who becomes the secured party, and the parties  
13 shall comply with the provisions of RCW 46.12.170.

14 (6) If the purchaser or transferee fails or neglects to make  
15 application to transfer the certificate of ownership and license  
16 registration within fifteen days after the date of delivery of the  
17 vehicle, he or she shall on making application for transfer be assessed  
18 a twenty-five dollar penalty on the sixteenth day and two dollars  
19 additional for each day thereafter, but not to exceed one hundred  
20 dollars. The director may by rule establish conditions under which the  
21 penalty will not be assessed when an application for transfer is  
22 delayed for reasons beyond the control of the purchaser. Conditions  
23 for not assessing the penalty may be established for but not limited to  
24 delays caused by:

- 25 (a) The department requesting additional supporting documents;
- 26 (b) Extended hospitalization or illness of the purchaser;
- 27 (c) Failure of a legal owner to release his or her interest;
- 28 (d) Failure, negligence, or nonperformance of the department,  
29 auditor, or subagent.

30 Failure or neglect to make application to transfer the certificate  
31 of ownership and license registration within forty-five days after the  
32 date of delivery of the vehicle is a misdemeanor.

33 (7) Upon receipt of an application for reissue or replacement of a  
34 certificate of ownership and transfer of license registration,  
35 accompanied by the endorsed certificate of ownership or other  
36 documentary evidence as is deemed necessary, the department shall, if  
37 the application is in order and if all provisions relating to the  
38 certificate of ownership and license registration have been complied  
39 with, issue new certificates of title and license registration as in

1 the case of an original issue and shall transmit the fees together with  
2 an itemized detailed report to the state treasurer, to be deposited in  
3 the motor vehicle fund.

4 (8) Once each quarter the department shall report to the department  
5 of revenue a list of those vehicles for which a seller's report has  
6 been received but no transfer of title has taken place.

7 NEW SECTION. **Sec. 13.** A new section is added to chapter 46.12 RCW  
8 to read as follows:

9 (1) The purpose of a transitional ownership record is to enable a  
10 security interest in a motor vehicle to be perfected in a timely manner  
11 when the certificate of ownership is not available at the time the  
12 security interest is created, and to provide for timely notification to  
13 security interest holders under chapter 46.55 RCW.

14 (2) A transitional ownership record is only acceptable as an  
15 ownership record for vehicles currently stored on the department's  
16 computer system and if the certificate of ownership or other authorized  
17 proof of ownership for the motor vehicle:

18 (a) Is not in the possession of the selling vehicle dealer or new  
19 security interest holder at the time the transitional ownership record  
20 is submitted to the department; and

21 (b) To the best of the knowledge of the selling dealer or new  
22 security interest holder, the certificate of ownership will not be  
23 received for submission to the department within twenty calendar days  
24 of the date of sale of the vehicle, or if no sale is involved, within  
25 twenty calendar days of the date the security agreement or contract is  
26 executed.

27 (3) A person shall submit the transitional ownership record to the  
28 department or to any of its agents or subagents. Agents and subagents  
29 shall immediately electronically transmit the transitional ownership  
30 records to the department. A transitional ownership document processed  
31 and recorded by an agent or subagent may be subject to fees as  
32 specified in RCW 46.01.140(4)(a) or (5)(b).

33 (4) "Transitional ownership record" means a record containing all  
34 of the following information:

35 (a) The date of sale;

36 (b) The name and address of each owner of the vehicle;

37 (c) The name and address of each security interest holder;

1 (d) If there are multiple security interest holders, the priorities  
2 of interest if the security interest holders do not jointly hold a  
3 single security interest;

4 (e) The vehicle identification number, the license plate number, if  
5 any, the year, make, and model of the vehicle;

6 (f) The name of the selling dealer or security interest holder who  
7 is submitting the transitional ownership record; and

8 (g) The transferee's driver's license number, if available.

9 (5) The report of sale form prescribed or approved by the  
10 department under RCW 46.12.101 may be used by a vehicle dealer as the  
11 transitional ownership record.

12 (6) Notwithstanding RCW 46.12.095 (1) and (2), compliance with the  
13 requirements of this section shall result in perfection of a security  
14 interest in the vehicle as of the time the security interest was  
15 created. Upon receipt of the certificate of ownership for the vehicle,  
16 or upon receipt of written confirmation that only an electronic record  
17 of ownership exists or that the certificate of ownership has been lost  
18 or destroyed, the selling dealer or new security interest holder shall  
19 promptly submit the same to the department together with an application  
20 for a new certificate of ownership containing the name and address of  
21 the secured party and tender the required fee as provided in RCW  
22 46.12.095(1).

23 NEW SECTION. **Sec. 14.** RCW 46.20.344 and 1965 ex.s. c 121 s 45 are  
24 each repealed."

25 **ESHB 1221** - S COMM AMD  
26 By Committee on Law & Justice

27 NOT ADOPTED 3/3/98

28 On page 1, line 2 of the title, after "license;" strike the  
29 remainder of the title and insert "amending RCW 46.55.105, 46.55.110,  
30 46.55.113, 46.55.120, 46.55.130, 46.55.010, 46.55.100, 46.12.095, and  
31 46.12.101; adding a new section to chapter 46.20 RCW; adding a new  
32 section to chapter 46.55 RCW; adding a new section to chapter 46.12  
33 RCW; creating a new section; and repealing RCW 46.20.344."

--- END ---