

# HOUSE BILL ANALYSIS

## ESSB 6431

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**Title:** An act relating to impoundment and forfeiture of vehicles operated by persons driving or in actual physical control of a vehicle while under the influence of intoxicating liquor.

**Brief Description:** Providing for impoundment and forfeiture of vehicles operated by persons driving a vehicle or in actual physical control of a vehicle while under the influence of intoxicating liquor.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Roach, Goings, Rasmussen, T. Sheldon, Rossi, Stevens, Long, Hochstatter, Oke, Swecker, McCaslin, Morton, Johnson, Deccio, Sellar and Haugen).

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Staff:** Bill Perry (786-7123).

**Background:** A person arrested for driving under the influence of alcohol (DUI) may have his or her vehicle impounded. Such a person is prohibited from selling, transferring, or encumbering the vehicle pending acquittal, or dismissal of the charges, or until 60 days after conviction of the DUI. If the person is convicted of the DUI and has had a prior DUI within five years, the vehicle is subject to seizure and forfeiture.

**Summary of Bill:** A vehicle may be impounded at the direction of law enforcement pursuant to local ordinance or state agency rule whenever the driver is arrested for violation of the laws pertaining to driving under the influence of liquor or drugs.

If the arresting officer had probable cause to believe the driver was guilty of DUI at the time of the arrest, then neither the officer or the law enforcement agency is liable for damages if the impoundment was improper.

If the operator of the impounded vehicle has not had a prior DUI violation within the past five years, the vehicle may be held for up to 15 days. It may not be released until towing, removal, and storage fees have been paid, or pursuant to an agency rule or local ordinance that authorizes release due to economic or personal hardship to the spouse of the operator. Public safety factors, including the criminal history and driving record of the operator, must be considered in deciding to release the vehicle to the spouse of the operator. A person has the right to a hearing in district or

municipal court to contest the validity of the impoundment. The petitioner must pay the filing fee for the hearing.

If the operator of the impounded vehicle has had a prior DUI and has a financial interest in the vehicle, the vehicle is subject to forfeiture. Notice of the intended forfeiture is provided to the owner of the vehicle, the tow truck operator, and to any person having a right or interest in the vehicle, including a community property interest. If no one notifies the seizing law enforcement agency of a claim of ownership or right to possession within 45 days, the vehicle is deemed forfeited, unless an agency rule or local ordinance prohibits forfeiture in situations of economic or personal hardship to the spouse of the operator, considering also the operator's criminal history and driving record. If a claim is made within 45 days, a hearing is held, and the seizing agency must prove by a preponderance of the evidence that the vehicle was operated by the person in violation of the laws pertaining to DUI, and the person has a prior DUI violation and has an ownership interest in the vehicle. If the vehicle is forfeited, the seizing law enforcement agency must satisfy any bona fide security interest and satisfy any bona fide community property interest. In addition, the value of the undivided community property interest of the innocent spouse may not be diminished by the towing, removal, or storage charges.

Provisions are made for a "transitional ownership record" to allow perfection of a security interest in a vehicle when the certificate of ownership is not available when the interest is created.

Local governments may submit claims for reimbursement by the Legislature if increased costs caused by this act can be verified by the Office of Financial Management.

**Fiscal Note:** Requested February 19, 1998.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

Office of Program Research