
SUBSTITUTE SENATE BILL 6431

State of Washington

55th Legislature

1998 Regular Session

By 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)

Read first time 1/23/98.

1 AN ACT Relating to impoundment and forfeiture of vehicles operated
2 by persons driving or in actual physical control of a vehicle while
3 under the influence of intoxicating liquor; amending RCW 46.55.113,
4 46.55.120, 46.61.5058, 46.12.240, 46.12.095, and 46.12.101; adding a
5 new section to chapter 46.12 RCW; creating a new section; and
6 prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that in 1996 drunk
9 drivers were involved in two hundred eighty-five fatal accidents
10 killing three hundred thirty-one people and six thousand four hundred
11 fifty injury accidents injuring ten thousand three hundred twenty-six
12 people. The legislature has increased criminal penalties, including
13 longer mandatory minimum jail sentences and fines, in order to punish
14 and deter drunk driving. In addition to criminal sanctions, however,
15 the legislature finds that authorizing the immediate impoundment of
16 vehicles driven by drunk drivers and in the case of repeat offenders
17 the forfeiture of such vehicles is reasonably necessary to increase
18 traffic safety and reduce the carnage caused by drunk driving. A
19 number of studies in states that have adopted impound and forfeiture

1 laws have found them effective in reducing drunk driving and related
2 fatalities. Repeat drunk drivers are more likely to continue to
3 reoffend and are substantially more likely to cause a fatal collision
4 than first-time offenders. Temporary impoundment for first-time
5 offenders and forfeiture for repeat offenders will reduce drunk
6 drivers' access to vehicles and help both prevent and deter drunk
7 driving. The impoundment or forfeiture of a vehicle operated in
8 violation of RCW 46.61.502 or 46.61.504 is intended to be a civil in
9 rem action against the vehicle in order to remove it from the public
10 highways and reduce the risk posed to traffic safety by a vehicle
11 accessible to a driver who is reasonably believed to have violated
12 these laws.

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

15 Whenever the driver of a vehicle is arrested for a violation of RCW
16 46.61.502 or 46.61.504, the (~~arresting officer may take custody of the~~
17 ~~vehicle and provide for its prompt removal to a place of safety~~)
18 vehicle is subject to impoundment, pursuant to applicable local
19 ordinance or state agency rule at the direction of a law enforcement
20 officer. In addition, a police officer may take custody of a vehicle
21 and provide for its prompt removal to a place of safety under any of
22 the following circumstances:

23 (1) Whenever a police officer finds a vehicle standing upon the
24 roadway in violation of any of the provisions of RCW 46.61.560, the
25 officer may provide for the removal of the vehicle or require the
26 driver or other person in charge of the vehicle to move the vehicle to
27 a position off the roadway;

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

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

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

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

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

6 (7) Upon determining that a person is operating a motor vehicle
7 without a valid driver's license in violation of RCW 46.20.005 or with
8 a license that has been expired for ninety days or more, or with a
9 suspended or revoked license in violation of RCW 46.20.342 or
10 46.20.420.

11 Nothing in this section may derogate from the powers of police
12 officers under the common law. For the purposes of this section, a
13 place of safety may include the business location of a registered tow
14 truck operator.

15 **Sec. 3.** RCW 46.55.120 and 1996 c 89 s 2 are each amended to read
16 as follows:

17 (1) Vehicles or other items of personal property registered or
18 titled with the department that are impounded by registered tow truck
19 operators pursuant to RCW 46.55.080, 46.55.085, or 46.55.113 may be
20 redeemed only under the following circumstances:

21 (a) Only the legal owner, the registered owner, a person authorized
22 in writing by the registered owner or the vehicle's insurer, a person
23 who is determined and verified by the operator to have the permission
24 of the registered owner of the vehicle or other item of personal
25 property registered or titled with the department, or one who has
26 purchased a vehicle or item of personal property registered or titled
27 with the department from the registered owner who produces proof of
28 ownership or written authorization and signs a receipt therefor, may
29 redeem an impounded vehicle or items of personal property registered or
30 titled with the department. In addition, any person redeeming a
31 vehicle impounded because the driver was arrested for a violation of
32 RCW 46.61.502 or 46.61.504 must prior to redemption establish with the
33 agency that ordered the vehicle impounded that he or she has a valid
34 driver's license and is in compliance with RCW 46.30.020. A vehicle
35 impounded because the driver is arrested for a violation of RCW
36 46.61.502 or 46.61.504 may be released only pursuant to a written order
37 from the agency that ordered the vehicle impounded.

1 (b) The vehicle or other item of personal property registered or
2 titled with the department shall be released upon the presentation to
3 any person having custody of the vehicle of commercially reasonable
4 tender sufficient to cover the costs of towing, storage, or other
5 services rendered during the course of towing, removing, impounding, or
6 storing any such vehicle. Commercially reasonable tender shall
7 include, without limitation, cash, major bank credit cards, or personal
8 checks drawn on in-state banks if accompanied by two pieces of valid
9 identification, one of which may be required by the operator to have a
10 photograph. If the towing firm can determine through the customer's
11 bank or a check verification service that the presented check would not
12 be paid by the bank or guaranteed by the service, the towing firm may
13 refuse to accept the check. Any person who stops payment on a personal
14 check or credit card, or does not make restitution within ten days from
15 the date a check becomes insufficient due to lack of funds, to a towing
16 firm that has provided a service pursuant to this section or in any
17 other manner defrauds the towing firm in connection with services
18 rendered pursuant to this section shall be liable for damages in the
19 amount of twice the towing and storage fees, plus costs and reasonable
20 attorney's fees.

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

30 (b) Any person seeking to redeem an impounded vehicle under this
31 section has a right to a hearing in the district or municipal court for
32 the jurisdiction in which the vehicle was impounded to contest the
33 validity of the impoundment or the amount of towing and storage
34 charges. The district court has jurisdiction to determine the issues
35 involving all impoundments including those authorized by the state or
36 its agents. The municipal court has jurisdiction to determine the
37 issues involving impoundments authorized by agents of the municipality.
38 Any request for a hearing shall be made in writing on the form provided
39 for that purpose and must be received by the district or municipal

1 court within ten days of the date the opportunity was provided for in
2 subsection (2)(a) of this section. At the time of the filing of the
3 hearing request, the petitioner shall pay to the court clerk a filing
4 fee in the same amount required for the filing of a suit in the small
5 claims department of a district court. If the hearing request is not
6 received by the district or municipal court within the ten-day period,
7 the right to a hearing is waived and the registered owner is liable for
8 any towing, storage, or other impoundment charges permitted under this
9 chapter. Upon receipt of a timely hearing request, the district court
10 shall proceed to hear and determine the validity of the impoundment.

11 (3)(a) The district court, within five days after the request for
12 a hearing, shall notify the registered tow truck operator, the person
13 requesting the hearing if not the owner, the registered and legal
14 owners of the vehicle or other item of personal property registered or
15 titled with the department, and the person or agency authorizing the
16 impound in writing of the hearing date and time.

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

23 (c) At the conclusion of the hearing, the district court shall
24 determine whether the impoundment was proper, whether the towing or
25 storage fees charged were in compliance with the posted rates, and who
26 is responsible for payment of the fees. The court may not adjust fees
27 or charges that are in compliance with the posted or contracted rates.

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

34 (e) If the impoundment is determined to be in violation of this
35 chapter, then the registered and legal owners of the vehicle or other
36 item of personal property registered or titled with the department
37 shall bear no impoundment, towing, or storage fees, and any security
38 shall be returned or discharged as appropriate, and the person or
39 agency who authorized the impoundment shall be liable for any towing,

1 storage, or other impoundment fees permitted under this chapter. The
2 court shall enter judgment in favor of the registered tow truck
3 operator against the person or agency authorizing the impound for the
4 impoundment, towing, and storage fees paid. In addition, the court
5 shall enter judgment in favor of the registered and legal owners of the
6 vehicle, or other item of personal property registered or titled with
7 the department, for the amount of the filing fee required by law for
8 the impound hearing petition as well as reasonable damages for loss of
9 the use of the vehicle during the time the same was impounded, for not
10 less than fifty dollars per day, against the person or agency
11 authorizing the impound. However, if an impoundment arising from an
12 alleged violation of RCW 46.61.502 or 46.61.504 is determined to be in
13 violation of this chapter, then the law enforcement officer directing
14 the impoundment and the government employing the officer are not liable
15 for damages if the officer had probable cause to believe the driver of
16 the vehicle was in violation of RCW 46.61.502 or 46.61.504. If any
17 judgment entered is not paid within fifteen days of notice in writing
18 of its entry, the court shall award reasonable attorneys' fees and
19 costs against the defendant in any action to enforce the judgment.
20 Notice of entry of judgment may be made by registered or certified
21 mail, and proof of mailing may be made by affidavit of the party
22 mailing the notice. Notice of the entry of the judgment shall read
23 essentially as follows:

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

35 (4) Any impounded abandoned vehicle or item of personal property
36 registered or titled with the department that is not redeemed within
37 fifteen days of mailing of the notice of custody and sale as required
38 by RCW 46.55.110(2) shall be sold at public auction in accordance with

1 all the provisions and subject to all the conditions of RCW 46.55.130.
2 A vehicle or item of personal property registered or titled with the
3 department may be redeemed at any time before the start of the auction
4 upon payment of the applicable towing and storage fees.

5 **Sec. 4.** RCW 46.61.5058 and 1995 c 332 s 6 are each amended to read
6 as follows:

7 ~~(1) ((Upon the arrest of a person or upon the filing of a~~
8 ~~complaint, citation, or information in a court of competent~~
9 ~~jurisdiction, based upon probable cause to believe that a person has~~
10 ~~violated RCW 46.61.502 or 46.61.504 or any similar municipal ordinance,~~
11 ~~if such person has a prior offense within five years as defined in RCW~~
12 ~~46.61.5055, and where the person has been provided written notice that~~
13 ~~any transfer, sale, or encumbrance of such person's interest in the~~
14 ~~vehicle over which that person was actually driving or had physical~~
15 ~~control when the violation occurred, is unlawful pending either~~
16 ~~acquittal, dismissal, sixty days after conviction, or other termination~~
17 ~~of the charge, such person shall be prohibited from encumbering,~~
18 ~~selling, or transferring his or her interest in such vehicle, except as~~
19 ~~otherwise provided in (a), (b), and (c) of this subsection, until~~
20 ~~either acquittal, dismissal, sixty days after conviction, or other~~
21 ~~termination of the charge. The prohibition against transfer of title~~
22 ~~shall not be stayed pending the determination of an appeal from the~~
23 ~~conviction.~~

24 ~~(a) A vehicle encumbered by a bona fide security interest may be~~
25 ~~transferred to the secured party or to a person designated by the~~
26 ~~secured party;~~

27 ~~(b) A leased or rented vehicle may be transferred to the lessor,~~
28 ~~rental agency, or to a person designated by the lessor or rental~~
29 ~~agency; and~~

30 ~~(c) A vehicle may be transferred to a third party or a vehicle~~
31 ~~dealer who is a bona fide purchaser or may be subject to a bona fide~~
32 ~~security interest in the vehicle unless it is established that (i) in~~
33 ~~the case of a purchase by a third party or vehicle dealer, such party~~
34 ~~or dealer had actual notice that the vehicle was subject to the~~
35 ~~prohibition prior to the purchase, or (ii) in the case of a security~~
36 ~~interest, the holder of the security interest had actual notice that~~
37 ~~the vehicle was subject to the prohibition prior to the encumbrance of~~
38 ~~title.~~

1 ~~(2) On conviction for a violation of either RCW 46.61.502 or~~
2 ~~46.61.504 or any similar municipal ordinance where the person convicted~~
3 ~~has a prior offense within five years as defined in RCW 46.61.5055, the~~
4 ~~motor vehicle the person was driving or over which the person had~~
5 ~~actual physical control at the time of the offense, if the person has~~
6 ~~a financial interest in the vehicle, is subject to seizure and~~
7 ~~forfeiture pursuant to this section.~~

8 ~~(3) A vehicle subject to forfeiture under this chapter may be~~
9 ~~seized by a law enforcement officer of this state upon process issued~~
10 ~~by a court of competent jurisdiction. Seizure of a vehicle may be made~~
11 ~~without process if the vehicle subject to seizure has been the subject~~
12 ~~of a prior judgment in favor of the state in a forfeiture proceeding~~
13 ~~based upon this section.~~

14 ~~(4) Seizure under subsection (3) of this section automatically~~
15 ~~commences proceedings for forfeiture. The law enforcement agency under~~
16 ~~whose authority the seizure was made shall cause notice of the seizure~~
17 ~~and)) If a vehicle is impounded because the operator is arrested for a~~
18 ~~violation of RCW 46.61.502 or 46.61.504, the vehicle may be held for up~~
19 ~~to fifteen days at the written direction of the agency ordering the~~
20 ~~vehicle impounded and must not be released until a person eligible to~~
21 ~~redeem it under RCW 46.55.120(1)(a) pays all towing, removal, and~~
22 ~~storage fees, notwithstanding the fact that the impoundment was ordered~~
23 ~~by a government agency. However, if the department's records show that~~
24 ~~the operator has a prior offense as defined in RCW 46.61.5055(8), and~~
25 ~~the operator has a financial interest in the vehicle, the vehicle is~~
26 ~~subject to forfeiture. If the vehicle is forfeited, then the~~
27 ~~forfeiting agency shall pay all the impoundment, towing, and storage~~
28 ~~fees for the vehicle and shall be entitled to recover those fees from~~
29 ~~the operator of the forfeited vehicle, including any attorneys' fees,~~
30 ~~costs of collection, and interest at the statutory rate for judgment~~
31 ~~interest from the date of payment by the agency of such fees.~~

32 ~~(2) A forfeiture proceeding is commenced by the law enforcement~~
33 ~~agency causing notice of the intended forfeiture of the seized vehicle~~
34 ~~to be served ((within fifteen)) not less than ten days after the~~
35 ~~seizure on the registered tow truck operator that impounded the~~
36 ~~vehicle, on the owner of the vehicle seized, on the person in charge of~~
37 ~~the vehicle when it was seized, and on any person having a known right~~
38 ~~or interest in the vehicle, including a community property interest.~~
39 ~~The notice ((of seizure)) may be served by any method authorized by law~~

1 or court rule, including but not limited to service by certified mail
2 with return receipt requested. Service by mail is complete upon
3 mailing (~~((within the fifteen day period after the seizure))~~). Notice
4 (~~((of seizure))~~) in the case of (~~((property))~~) a vehicle subject to a
5 security interest that has been perfected on a certificate of title or
6 by compliance with section 8 of this act shall be made by service upon
7 the secured party or the secured party's assignee at the address shown
8 on the financing statement (~~((or))~~), the certificate of title, or the
9 transitional ownership record. Once the registered tow truck operator
10 that impounded the vehicle receives notice, the vehicle must not be
11 released except upon written order of the chief law enforcement officer
12 of the agency directing the impoundment or his or her designee, an
13 administrative law judge, or a court.

14 (~~((+5))~~) (3) If no person notifies the seizing law enforcement
15 agency in writing of the person's claim of ownership or right to
16 possession of the seized vehicle within forty-five days of the seizure,
17 the vehicle is deemed forfeited.

18 (~~((+6))~~) (4) If a person notifies the seizing law enforcement agency
19 in writing of the person's claim of ownership or right to possession of
20 the seized vehicle within forty-five days of the seizure, the law
21 enforcement agency shall give the person or persons a reasonable
22 opportunity to be heard as to the claim or right. At the hearing, if
23 the seizing agency proves by a preponderance of the evidence that the
24 vehicle was operated by a person in violation of RCW 46.61.502 or
25 46.61.504, and that person has a prior offense as defined by RCW
26 46.61.5055(8), and has an ownership interest in the vehicle, then the
27 vehicle shall be forfeited. The hearing shall be before the chief law
28 enforcement officer of the seizing agency or the chief law enforcement
29 officer's designee, except where the seizing agency is a state agency
30 as defined in RCW 34.12.020, the hearing shall be before the chief law
31 enforcement officer of the seizing agency or an administrative law
32 judge appointed under chapter 34.12 RCW, except that any person
33 asserting a claim or right may remove the matter to a court of
34 competent jurisdiction. Removal may only be accomplished according to
35 the rules of civil procedure. The person seeking removal of the matter
36 must serve process against the state, county, political subdivision, or
37 municipality that operates the seizing agency, and any other party of
38 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-
39 five days after the person seeking removal has notified the seizing law

1 enforcement agency of the person's claim of ownership or right to
2 possession. The court to which the matter is to be removed shall be
3 the district court when the aggregate value of the vehicle is within
4 the jurisdictional limit set forth in RCW 3.66.020. A hearing before
5 the seizing agency and any appeal therefrom shall be under Title 34
6 RCW. In a court hearing between two or more claimants to the vehicle
7 involved, the prevailing party shall be entitled to a judgment for
8 costs and reasonable attorneys' fees. The burden of producing evidence
9 shall be upon the person claiming to be the legal owner or the person
10 claiming to have the lawful right to possession of the vehicle. The
11 seizing law enforcement agency shall promptly return the vehicle to the
12 claimant upon a determination by the administrative law judge or court
13 that the claimant is the present legal owner under Title 46 RCW or is
14 lawfully entitled to possession of the vehicle.

15 ~~((+7))~~ (5) When a vehicle is forfeited under this chapter the
16 seizing law enforcement agency may sell the vehicle, retain it for
17 official use, or upon application by a law enforcement agency of this
18 state release the vehicle to that agency for the exclusive use of
19 enforcing this title; provided, however, that the agency shall first
20 satisfy any bona fide security interest to which the vehicle is subject
21 ~~((under subsection (1) (a) or (c) of this section))~~ and provided
22 further that where the ownership interest subject to forfeiture is bona
23 fide community property, the value of the undivided community property
24 interest of the spouse who was not operating the vehicle in violation
25 of RCW 46.61.502 or 46.61.504 shall not be forfeited nor subject to
26 reduction for towing, removal, or storage charges associated with the
27 forfeiture action. The value of the undivided community property
28 interest not subject to forfeiture or reduction is one-half of the
29 value of the vehicle as defined in subsection (12) of this section
30 after deducting the cost of satisfying any bona fide security interest.

31 ~~((+8))~~ (6) When a vehicle is forfeited, the seizing agency shall
32 keep a record indicating the identity of the prior owner, if known, a
33 description of the vehicle, the disposition of the vehicle, the value
34 of the vehicle at the time of seizure, and the amount of proceeds
35 realized from disposition of the vehicle.

36 ~~((+9))~~ (7) Each seizing agency shall retain records of forfeited
37 vehicles for at least seven years.

1 (~~(10)~~) (8) Each seizing agency shall file a report including a
2 copy of the records of forfeited vehicles with the state treasurer each
3 calendar quarter.

4 (~~(11)~~) (9) The quarterly report need not include a record of a
5 forfeited vehicle that is still being held for use as evidence during
6 the investigation or prosecution of a case or during the appeal from a
7 conviction.

8 (~~(12)~~) (10) By January 31st of each year, each seizing agency
9 shall remit to the state treasurer an amount equal to ten percent of
10 the net proceeds of vehicles forfeited during the preceding calendar
11 year. Money remitted shall be deposited in the public safety and
12 education account.

13 (~~(13)~~) (11) The net proceeds of a forfeited vehicle is the value
14 of the forfeitable interest in the vehicle after deducting the cost of
15 satisfying a bona fide community property interest and security
16 interest to which the vehicle is subject at the time of seizure and all
17 towing, removal, and storage fees; and in the case of a sold vehicle,
18 after deducting the cost of sale, including reasonable fees or
19 commissions paid to independent selling agents.

20 (~~(14)~~) (12) The value of a sold forfeited vehicle is the sale
21 price. The value of a retained forfeited vehicle is the fair market
22 value of the vehicle at the time of seizure, determined when possible
23 by reference to an applicable commonly used index, such as the index
24 used by the department of licensing. A seizing agency may, but need
25 not, use an independent qualified appraiser to determine the value of
26 retained vehicles. If an appraiser is used, the value of the vehicle
27 appraised is net of the cost of the appraisal.

28 (13) When a vehicle is forfeited under this chapter, the seizing
29 law enforcement agency shall send to the department a copy of the order
30 of forfeiture. Upon receipt of that order, the department shall cancel
31 the registration and license plates of the vehicle. A new registration
32 and license plates may be issued for the vehicle only to: (a) A person
33 who purchases the vehicle from the seizing law enforcement agency; (b)
34 the seizing law enforcement agency; or (c) another law enforcement
35 agency.

36 (14) Notwithstanding RCW 46.52.120(2), in any hearing under this
37 section to contest the validity of the forfeiture, an abstract of the
38 person's driving record may be admitted as and is prima facie evidence
39 that the person was convicted of each offense shown by the abstract.

1 In addition, a certified vehicle registration of the vehicle sought to
2 be forfeited shall be admissible without further evidentiary
3 foundation.

4 (15) A determination of facts made by a person conducting a hearing
5 under this section or RCW 46.55.120 shall not have any collateral
6 estoppel effect on a subsequent criminal prosecution and shall not
7 preclude litigation of those same facts in a subsequent criminal
8 prosecution.

9 **Sec. 5.** RCW 46.12.240 and 1987 c 388 s 8 are each amended to read
10 as follows:

11 (1) The suspension, revocation, cancellation, or refusal by the
12 director of any license or certificate provided for in chapters 46.12
13 and 46.16 RCW is conclusive unless the person whose license or
14 certificate is suspended, revoked, canceled, or refused appeals to the
15 superior court of Thurston county, or at his option to the superior
16 court of the county of his residence, for the purpose of having the
17 suspension, revocation, cancellation, or refusal of the license or
18 certificate set aside. Notice of appeal must be filed within ten days
19 after receipt of the notice of suspension, revocation, cancellation, or
20 refusal. Upon the filing of the notice of appeal the court shall issue
21 an order to the director to show cause why the license should not be
22 granted or reinstated, which order shall be returnable not less than
23 ten days after the date of service thereof upon the director. Service
24 shall be in the manner prescribed for service of summons and complaint
25 in other civil actions. Upon the hearing on the order to show cause,
26 the court shall hear evidence concerning matters with reference to the
27 suspension, revocation, cancellation, or refusal of the license or
28 certificate and shall enter judgment either affirming or setting aside
29 the suspension, revocation, cancellation, or refusal.

30 (2) This section does not apply to vehicle registration
31 cancellations under RCW (~~46.16.710 through 46.16.760~~) 46.61.5058(13).

32 **Sec. 6.** RCW 46.12.095 and 1969 ex.s. c 170 s 16 are each amended
33 to read as follows:

34 A security interest in a vehicle other than one held as inventory
35 by a manufacturer or a dealer and for which a certificate of ownership
36 is required is perfected only by compliance with the requirements of

1 section 8 of this act under the circumstances provided for therein or
2 by compliance with the requirements of this section:

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

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

15 (3) If a vehicle is subject to a security interest when brought
16 into this state, perfection of the security interest is determined by
17 the law of the jurisdiction where the vehicle was when the security
18 interest was attached, subject to the following:

19 (a) If the security interest was perfected under the law of the
20 jurisdiction where the vehicle was when the security interest was
21 attached, the following rules apply:

22 (b) If the name of the secured party is shown on the existing
23 certificate of ownership issued by that jurisdiction, the security
24 interest continues perfected in this state. The name of the secured
25 party shall be shown on the certificate of ownership issued for the
26 vehicle by this state. The security interest continues perfected in
27 this state upon the issuance of such ownership certificate.

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

32 **Sec. 7.** RCW 46.12.101 and 1991 c 339 s 19 are each amended to read
33 as follows:

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

36 (1) If an owner transfers his or her interest in a vehicle, other
37 than by the creation, deletion, or change of a security interest, the
38 owner shall, at the time of the delivery of the vehicle, execute an

1 assignment to the transferee and provide an odometer disclosure
2 statement under RCW 46.12.124 on the certificate of ownership or as the
3 department otherwise prescribes, and cause the certificate and
4 assignment to be transmitted to the transferee. (~~Within five days,~~
5 ~~excluding Saturdays, Sundays, and state and federal holidays,~~) The
6 owner shall notify the department or its agents or subagents, in
7 writing, on the appropriate form, of the date of the sale or transfer,
8 the name and address of the owner and of the transferee, the
9 transferee's driver's license number, if available, and such
10 description of the vehicle, including the vehicle identification
11 number, the license plate number, or both, as may be required in the
12 appropriate form provided or approved for that purpose by the
13 department. The report of sale is deemed properly filed if all
14 required information in this section is provided on the form and
15 includes a department authorized notation or receipt that the document
16 was received by the department or its agents or subagents on or before
17 the fifth day following the date of sale of the vehicle, excluding
18 Saturdays, Sundays, and state and federal holidays. Any report of sale
19 processed and recorded by the department's agents or subagents may be
20 subject to fees as specified in RCW 46.01.140 (4)(a) or (5)(b).

21 (2) The requirements of subsection (1) of this section to provide
22 an odometer disclosure statement apply to the transfer of vehicles held
23 for lease when transferred to a lessee and then to the lessor at the
24 end of the leasehold and to vehicles held in a fleet when transferred
25 to a purchaser.

26 (3) Except as provided in RCW (~~46.12.120~~) 46.70.122 the
27 transferee shall within fifteen days after delivery to the transferee
28 of the vehicle, execute the application for a new certificate of
29 ownership in the same space provided therefor on the certificate or as
30 the department prescribes, and cause the certificates and application
31 to be transmitted to the department.

32 (4) Upon request of the owner or transferee, a secured party in
33 possession of the certificate of ownership shall, unless the transfer
34 was a breach of its security agreement, either deliver the certificate
35 to the transferee for transmission to the department or, when the
36 secured party receives the owner's assignment from the transferee, it
37 shall transmit the transferee's application for a new certificate, the
38 existing certificate, and the required fee to the department.

1 Compliance with this section does not affect the rights of the secured
2 party.

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

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

- 18 (a) The department requesting additional supporting documents;
- 19 (b) Extended hospitalization or illness of the purchaser;
- 20 (c) Failure of a legal owner to release his or her interest;
- 21 (d) Failure, negligence, or nonperformance of the department,
22 auditor, or subagent.

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

26 (7) Upon receipt of an application for reissue or replacement of a
27 certificate of ownership and transfer of license registration,
28 accompanied by the endorsed certificate of ownership or other
29 documentary evidence as is deemed necessary, the department shall, if
30 the application is in order and if all provisions relating to the
31 certificate of ownership and license registration have been complied
32 with, issue new certificates of title and license registration as in
33 the case of an original issue and shall transmit the fees together with
34 an itemized detailed report to the state treasurer, to be deposited in
35 the motor vehicle fund.

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

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

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

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

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

15 (b) To the best of the knowledge of the selling dealer or new
16 security interest holder, the certificate of ownership will not be
17 received for submission to the department within twenty calendar days
18 of the date of sale of the vehicle, or if no sale is involved, within
19 twenty calendar days of the date the security agreement or contract is
20 executed.

21 (3) A person shall submit the transitional ownership record to the
22 department or to any of its authorized agents or subagents. A
23 transitional ownership document processed and recorded by an agent or
24 subagent may be subject to fees as specified in RCW 46.01.140 (4)(a) or
25 (5)(b).

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

28 (a) The date of sale;

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

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

31 (d) If there are multiple security interest holders, the priorities
32 of interest if the security interest holders do not jointly hold a
33 single security interest;

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

36 (f) The name of the selling dealer or security interest holder who
37 is submitting the transitional ownership record.

1 (5) The report of sale form prescribed by the department under RCW
2 46.12.101 may be utilized by a vehicle dealer as the transitional
3 ownership record.

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

15 (7) The department shall adopt rules in accordance with chapter
16 34.05 RCW to develop the form for the transitional ownership record.

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