

2 SB 5649 - S AMD - 047  
3 By Senator Haugen

4 ADOPTED 3/11/99

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

7 "Sec. 1. RCW 18.11.070 and 1989 c 307 s 43 are each amended to  
8 read as follows:

9 (1) It is unlawful for any person to act as an auctioneer or for an  
10 auction company to engage in any business in this state without a  
11 license.

12 (2) This chapter does not apply to:

13 (a) An auction of goods conducted by an individual who personally  
14 owns those goods and who did not acquire those goods for resale;

15 (b) An auction conducted by or under the direction of a public  
16 authority;

17 (c) An auction held under judicial order in the settlement of a  
18 decedent's estate;

19 (d) An auction which is required by law to be at auction;

20 (e) An auction conducted by or on behalf of a political  
21 organization or a charitable corporation or association if the person  
22 conducting the sale receives no compensation;

23 (f) An auction of livestock or agricultural products which is  
24 conducted under chapter 16.65 or 20.01 RCW. Auctions not regulated  
25 under chapter 16.65 or 20.01 RCW shall be fully subject to the  
26 provisions of this chapter;

27 (g) An auction held under chapter 19.150 RCW; (~~or~~)

28 (h) An auction of an abandoned vehicle under chapter 46.55 RCW; or

29 (i) An auction of fur pelts conducted by any cooperative  
30 association organized under chapter 23.86 RCW or its wholly owned  
31 subsidiary. In order to qualify for this exemption, the fur pelts must  
32 be from members of the association. However, the association, without  
33 loss of the exemption, may auction pelts that it purchased from  
34 nonmembers for the purpose of completing lots or orders, so long as the  
35 purchased pelts do not exceed fifteen percent of the total pelts  
36 auctioned.

1       **Sec. 2.** RCW 46.55.010 and 1998 c 203 s 8 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 one  
7 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) "Long-term impound" means an impound for up to thirty, sixty,  
30 or ninety days ordered under RCW 46.55.120 because the driver was in  
31 violation of RCW 46.20.342.

32       (6) "Master log" means the document or an electronic facsimile  
33 prescribed by the department and the Washington state patrol in which  
34 an operator records transactions involving impounded vehicles.

35       (~~(6)~~) (7) "Registered tow truck operator" or "operator" means any  
36 person who engages in the impounding, transporting, or storage of  
37 unauthorized vehicles or the disposal of abandoned vehicles.

38       (~~(7)~~) (8) "Residential property" means property that has no more  
39 than four living units located on it.



1       **Sec. 4.** RCW 46.55.080 and 1989 c 111 s 8 are each amended to read  
2 as follows:

3       (1) If a vehicle is in violation of the time restrictions of RCW  
4 46.55.010(~~((12))~~) (13), it may be impounded by a registered tow truck  
5 operator at the direction of a law enforcement officer or other public  
6 official with jurisdiction if the vehicle is on public property, or at  
7 the direction of the property owner or an agent if it is on private  
8 property. A law enforcement officer may also direct the impoundment of  
9 a vehicle pursuant to a writ or court order.

10       (2) The person requesting a private impound or a law enforcement  
11 officer or public official requesting a public impound shall provide a  
12 signed authorization for the impound at the time and place of the  
13 impound to the registered tow truck operator before the operator may  
14 proceed with the impound. A registered tow truck operator, employee,  
15 or his or her agent may not serve as an agent of a property owner for  
16 the purposes of signing an impound authorization or, independent of the  
17 property owner, identify a vehicle for impound.

18       (3) In the case of a private impound, the impound authorization  
19 shall include the following statement: "A person authorizing this  
20 impound, if the impound is found in violation of chapter 46.55 RCW, may  
21 be held liable for the costs incurred by the vehicle owner."

22       (4) A registered tow truck operator shall record and keep in the  
23 operator's files the date and time that a vehicle is put in the  
24 operator's custody and released. The operator shall make an entry into  
25 a master log regarding transactions relating to impounded vehicles.  
26 The operator shall make this master log available, upon request, to  
27 representatives of the department or the state patrol.

28       (5) A person who engages in or offers to engage in the activities  
29 of a registered tow truck operator may not be associated in any way  
30 with a person or business whose main activity is authorizing the  
31 impounding of vehicles.

32       **Sec. 5.** RCW 46.55.100 and 1998 c 203 s 9 are each amended to read  
33 as follows:

34       (1) At the time of impoundment the registered tow truck operator  
35 providing the towing service shall give immediate notification, by  
36 telephone or radio, to a law enforcement agency having jurisdiction who  
37 shall maintain a log of such reports. A law enforcement agency, or a  
38 private communication center acting on behalf of a law enforcement

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

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

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

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

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

36 (6) If the operator finds no owner identification, the operator  
37 shall immediately notify the appropriate law enforcement agency, which  
38 shall search the vehicle and any other items of personal property  
39 registered or titled with the department for the vehicle identification

1 number or other appropriate identification numbers and check the  
2 necessary records to determine the vehicle's or other property's  
3 owners.

4 **Sec. 6.** RCW 46.55.110 and 1998 c 203 s 3 are each amended to read  
5 as follows:

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

22 (2) In addition, if a long-term impound has been ordered, the  
23 notice must state the length of the impound, the requirement of the  
24 posting of a security deposit to ensure payment of the costs of  
25 removal, towing, and storage, notification that if the security deposit  
26 is not posted the vehicle will immediately be processed and sold at  
27 auction as an abandoned vehicle, and the requirements set out in RCW  
28 46.55.120(1)(b) regarding the payment of the costs of removal, towing,  
29 and storage as well as providing proof of satisfaction of any  
30 penalties, fines, or forfeitures before redemption. The notice must  
31 also state that the registered owner is ineligible to purchase the  
32 vehicle at the abandoned vehicle auction, if held.

33 (3) In the case of an abandoned vehicle, or other item of personal  
34 property registered or titled with the department, within twenty-four  
35 hours after receiving information on the owners from the department  
36 through the abandoned vehicle report, the tow truck operator shall send  
37 by certified mail, with return receipt requested, a notice of custody  
38 and sale to the legal and registered owners.

1       (~~(3)~~) (4) If the date on which a notice required by subsection  
2 (~~(2)~~) (3) of this section is to be mailed falls upon a Saturday,  
3 Sunday, or a postal holiday, the notice may be mailed on the next day  
4 that is neither a Saturday, Sunday, nor a postal holiday.

5       (~~(4)~~) (5) No notices need be sent to the legal or registered  
6 owners of an impounded vehicle or other item of personal property  
7 registered or titled with the department, if the vehicle or personal  
8 property has been redeemed.

9       **Sec. 7.** RCW 46.55.120 and 1998 c 203 s 5 are each amended to read  
10 as follows:

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

15       (a) Only the legal owner, the registered owner, a person authorized  
16 in writing by the registered owner or the vehicle's insurer, a person  
17 who is determined and verified by the operator to have the permission  
18 of the registered owner of the vehicle or other item of personal  
19 property registered or titled with the department, or one who has  
20 purchased a vehicle or item of personal property registered or titled  
21 with the department from the registered owner who produces proof of  
22 ownership or written authorization and signs a receipt therefor, may  
23 redeem an impounded vehicle or items of personal property registered or  
24 titled with the department. In addition, a vehicle impounded because  
25 the operator is in violation of RCW 46.20.342(1)(c) shall not be  
26 released until a person eligible to redeem it under this subsection  
27 (1)(a) satisfies the requirements of (~~(b)~~) (e) of this subsection,  
28 including paying all towing, removal, and storage fees, notwithstanding  
29 the fact that the hold was ordered by a government agency. If the  
30 department's records show that the operator has been convicted of a  
31 violation of RCW 46.20.342 or a similar local ordinance within the past  
32 five years, the vehicle may be held for up to thirty days at the  
33 written direction of the agency ordering the vehicle impounded. A  
34 vehicle impounded because the operator is arrested for a violation of  
35 RCW 46.20.342 may be released only pursuant to a written order from the  
36 agency that ordered the vehicle impounded. An agency may issue a  
37 written order to release pursuant to a provision of an applicable state  
38 agency rule or local ordinance authorizing release on the basis of

1 economic or personal hardship to the spouse of the operator, taking  
2 into consideration public safety factors, including the operator's  
3 criminal history and driving record.

4 If a vehicle is impounded because the operator is in violation of  
5 RCW 46.20.342(1) (a) or (b), the vehicle may be held for up to thirty  
6 days at the written direction of the agency ordering the vehicle  
7 impounded. However, if the department's records show that the operator  
8 has been convicted of a violation of RCW 46.20.342(1) (a) or (b) or a  
9 similar local ordinance within the past five years, the vehicle may be  
10 held at the written direction of the agency ordering the vehicle  
11 impounded for up to sixty days, and for up to ninety days if the  
12 operator has two or more such prior offenses. If a vehicle is  
13 impounded because the operator is arrested for a violation of RCW  
14 46.20.342, the vehicle may not be released until a person eligible to  
15 redeem it under this subsection (1)(a) satisfies the requirements of  
16 (~~((b))~~) (e) of this subsection, including paying all towing, removal,  
17 and storage fees, notwithstanding the fact that the hold was ordered by  
18 a government agency.

19 (b) If the vehicle is directed to be held for a long-term impound,  
20 a person who desires to redeem the vehicle at the end of the period of  
21 impound shall within five days of the impound at the request of the tow  
22 truck operator pay a security deposit to the tow truck operator of not  
23 more than one-half of the applicable impound storage rate for each day  
24 of the proposed long-term impound. The tow truck operator shall credit  
25 this amount against the final bill for removal, towing, and storage  
26 upon redemption. The tow truck operator may accept other sufficient  
27 security in lieu of the security deposit. If the person desiring to  
28 redeem the vehicle does not pay the security deposit or provide other  
29 security acceptable to the tow truck operator, the tow truck operator  
30 may process and sell at auction the vehicle as an abandoned vehicle  
31 within the normal time limits set out in RCW 46.55.130(1). The  
32 security deposit required by this section may be paid and must be  
33 accepted at any time up to twenty-four hours before the beginning of  
34 the auction to sell the vehicle as abandoned. The registered owner is  
35 not eligible to purchase the vehicle at the auction, and the tow truck  
36 operator shall sell the vehicle to the highest bidder who is not the  
37 registered owner.

38 (c) Notwithstanding (b) of this subsection, a rental car business  
39 may immediately redeem a rental vehicle it owns by payment of the costs

1 of removal, towing, and storage, whereupon the vehicle will not be held  
2 for a long-term impound.

3 (d) Notwithstanding (b) of this subsection, a motor vehicle dealer  
4 or lender with a perfected security interest in the vehicle may redeem  
5 or lawfully repossess a vehicle immediately by payment of the costs of  
6 removal, towing, and storage, whereupon the vehicle will not be held  
7 for a long-term impound. A motor vehicle dealer or lender with a  
8 perfected security interest in the vehicle may not knowingly and  
9 intentionally engage in collusion with a registered owner to repossess  
10 and then return or resell a vehicle to the registered owner in an  
11 attempt to avoid a long-term impound. However, this provision does not  
12 preclude a vehicle dealer or lender with a perfected security interest  
13 in the vehicle from repossessing the vehicle and then selling, leasing,  
14 or otherwise disposing of it in accordance with chapter 62A.9 RCW,  
15 including providing redemption rights to the debtor under RCW 62A.9-  
16 506.

17 (e) The vehicle or other item of personal property registered or  
18 titled with the department shall be released upon the presentation to  
19 any person having custody of the vehicle of commercially reasonable  
20 tender sufficient to cover the costs of towing, storage, or other  
21 services rendered during the course of towing, removing, impounding, or  
22 storing any such vehicle, with credit being given for the amount of any  
23 security deposit paid under (b) of this subsection. In addition, if a  
24 vehicle is impounded because the operator was arrested for a violation  
25 of RCW 46.20.342 or 46.20.420 and was being operated by the registered  
26 owner when it was impounded, it must not be released to any person  
27 until the registered owner establishes with the ((agency that ordered  
28 the vehicle impounded)) court having jurisdiction that any penalties,  
29 finances, or forfeitures owed by him or her as a result of the impound  
30 have been satisfied. Commercially reasonable tender shall include,  
31 without limitation, cash, major bank credit cards, or personal checks  
32 drawn on in-state banks if accompanied by two pieces of valid  
33 identification, one of which may be required by the operator to have a  
34 photograph. If the towing firm can determine through the customer's  
35 bank or a check verification service that the presented check would not  
36 be paid by the bank or guaranteed by the service, the towing firm may  
37 refuse to accept the check. Any person who stops payment on a personal  
38 check or credit card, or does not make restitution within ten days from  
39 the date a check becomes insufficient due to lack of funds, to a towing

1 firm that has provided a service pursuant to this section or in any  
2 other manner defrauds the towing firm in connection with services  
3 rendered pursuant to this section shall be liable for damages in the  
4 amount of twice the towing and storage fees, plus costs and reasonable  
5 attorney's fees.

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

15 (b) Any person seeking to redeem an impounded vehicle under this  
16 section has a right to a hearing in the district or municipal court for  
17 the jurisdiction in which the vehicle was impounded to contest the  
18 validity of the impoundment or the amount of towing and storage  
19 charges. The district court has jurisdiction to determine the issues  
20 involving all impoundments including those authorized by the state or  
21 its agents. The municipal court has jurisdiction to determine the  
22 issues involving impoundments authorized by agents of the municipality.  
23 Any request for a hearing shall be made in writing on the form provided  
24 for that purpose and must be received by the appropriate court within  
25 ten days of the date the opportunity was provided for in subsection  
26 (2)(a) of this section and more than five days before the date of the  
27 auction. At the time of the filing of the hearing request, the  
28 petitioner shall pay to the court clerk a filing fee in the same amount  
29 required for the filing of a suit in district court. If the hearing  
30 request is not received by the court within the ten-day period, the  
31 right to a hearing is waived and the registered owner is liable for any  
32 towing, storage, or other impoundment charges permitted under this  
33 chapter. Upon receipt of a timely hearing request, the court shall  
34 proceed to hear and determine the validity of the impoundment.

35 (3)(a) The court, within five days after the request for a hearing,  
36 shall notify the registered tow truck operator, the person requesting  
37 the hearing if not the owner, the registered and legal owners of the  
38 vehicle or other item of personal property registered or titled with

1 the department, and the person or agency authorizing the impound in  
2 writing of the hearing date and time.

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

9 (c) At the conclusion of the hearing, the court shall determine  
10 whether the impoundment was proper, whether the towing or storage fees  
11 charged were in compliance with the posted rates, and who is  
12 responsible for payment of the fees. The court may not adjust fees or  
13 charges that are in compliance with the posted or contracted rates.

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

20 (e) If the impoundment is determined to be in violation of this  
21 chapter, then the registered and legal owners of the vehicle or other  
22 item of personal property registered or titled with the department  
23 shall bear no impoundment, towing, or storage fees, and any security  
24 shall be returned or discharged as appropriate, and the person or  
25 agency who authorized the impoundment shall be liable for any towing,  
26 storage, or other impoundment fees permitted under this chapter. The  
27 court shall enter judgment in favor of the registered tow truck  
28 operator against the person or agency authorizing the impound for the  
29 impoundment, towing, and storage fees paid. In addition, the court  
30 shall enter judgment in favor of the registered and legal owners of the  
31 vehicle, or other item of personal property registered or titled with  
32 the department, for the amount of the filing fee required by law for  
33 the impound hearing petition as well as reasonable damages for loss of  
34 the use of the vehicle during the time the same was impounded, for not  
35 less than fifty dollars per day, against the person or agency  
36 authorizing the impound. However, if an impoundment arising from an  
37 alleged violation of RCW 46.20.342 or 46.20.420 is determined to be in  
38 violation of this chapter, then the law enforcement officer directing  
39 the impoundment and the government employing the officer are not liable

1 for damages if the officer relied in good faith and without gross  
2 negligence on the records of the department in ascertaining that the  
3 operator of the vehicle had a suspended or revoked driver's license.  
4 If any judgment entered is not paid within fifteen days of notice in  
5 writing of its entry, the court shall award reasonable attorneys' fees  
6 and costs against the defendant in any action to enforce the judgment.  
7 Notice of entry of judgment may be made by registered or certified  
8 mail, and proof of mailing may be made by affidavit of the party  
9 mailing the notice. Notice of the entry of the judgment shall read  
10 essentially as follows:

11 TO: . . . . .  
12 YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the  
13 . . . . . Court located at . . . . . in the sum of  
14 \$. . . . ., in an action entitled . . . . ., Case No.  
15 . . . . YOU ARE FURTHER NOTIFIED that attorneys fees and costs  
16 will be awarded against you under RCW . . . if the judgment is  
17 not paid within 15 days of the date of this notice.  
18 DATED this . . . . day of . . . . ., (year) . . .  
19 Signature . . . . .  
20 Typed name and address  
21 of party mailing notice

22 (4) Any impounded abandoned vehicle or item of personal property  
23 registered or titled with the department that is not redeemed within  
24 fifteen days of mailing of the notice of custody and sale as required  
25 by RCW 46.55.110(~~(+2)~~) (3) shall be sold at public auction in  
26 accordance with all the provisions and subject to all the conditions of  
27 RCW 46.55.130. A vehicle or item of personal property registered or  
28 titled with the department may be redeemed at any time before the start  
29 of the auction upon payment of the applicable towing and storage fees.

30 **Sec. 8.** RCW 46.55.130 and 1998 c 203 s 6 are each amended to read  
31 as follows:

32 (1) If, after the expiration of fifteen days from the date of  
33 mailing of notice of custody and sale required in RCW 46.55.110(~~(+2)~~)  
34 (3) to the registered and legal owners, the vehicle remains unclaimed  
35 and has not been listed as a stolen vehicle, or for which a long-term  
36 impound has been directed but no security paid under RCW 46.55.120,  
37 then the registered tow truck operator having custody of the vehicle

1 shall conduct a sale of the vehicle at public auction after having  
2 first published a notice of the date, place, and time of the auction in  
3 a newspaper of general circulation in the county in which the vehicle  
4 is located not less than three days and no more than ten days before  
5 the date of the auction. The notice shall contain a description of the  
6 vehicle including the make, model, year, and license number and a  
7 notification that a three-hour public viewing period will be available  
8 before the auction. The auction shall be held during daylight hours of  
9 a normal business day.

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

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

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

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

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

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

27 (f) The successful bidder shall apply for title within fifteen  
28 days;

29 (g) The registered tow truck operator shall post a copy of the  
30 auction procedure at the bidding site. If the bidding site is  
31 different from the licensed office location, the operator shall post a  
32 clearly visible sign at the office location that describes in detail  
33 where the auction will be held. At the bidding site a copy of the  
34 newspaper advertisement that lists the vehicles for sale shall be  
35 posted;

36 (h) All surplus moneys derived from the auction after satisfaction  
37 of the registered tow truck operator's lien shall be remitted within  
38 thirty days to the ~~((department for deposit in the state motor vehicle~~  
39 ~~fund. A report identifying the vehicles resulting in any surplus shall~~

1 accompany the remitted funds. — If the director subsequently receives a  
2 valid claim from the)) registered vehicle owner of record as determined  
3 by the department ((within one year from the date of the auction, the  
4 surplus moneys shall be remitted to such owner));

5 (i) If an operator receives no bid, or if the operator is the  
6 successful bidder at auction, the operator shall, within forty-five  
7 days sell the vehicle to a licensed vehicle wrecker, hulk hauler, or  
8 scrap processor by use of the abandoned vehicle report-affidavit of  
9 sale, or the operator shall apply for title to the vehicle.

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

13 (4)(a) In no case may the accumulation of storage charges exceed  
14 fifteen days from the date of receipt of the information by the  
15 operator from the department as provided by RCW 46.55.110((+2)) (3).

16 (b) The failure of the registered tow truck operator to comply with  
17 the time limits provided in this chapter limits the accumulation of  
18 storage charges to five days except where delay is unavoidable.  
19 Providing incorrect or incomplete identifying information to the  
20 department in the abandoned vehicle report shall be considered a  
21 failure to comply with these time limits if correct information is  
22 available. However, storage charges begin to accrue again on the date  
23 the correct and complete information is provided to the department by  
24 the registered tow truck operator.

25 **Sec. 9.** RCW 46.61.625 and 1995 c 360 s 10 are each amended to read  
26 as follows:

27 (1) No person or persons shall occupy any trailer while it is being  
28 moved upon a public highway, except a person occupying a proper  
29 position for steering a trailer designed to be steered from a rear-end  
30 position.

31 (2) No person or persons may occupy a vehicle while it is being  
32 towed by a tow truck as defined in RCW 46.55.010((+8)).

33 **Sec. 10.** RCW 46.70.180 and 1997 c 153 s 1 are each amended to read  
34 as follows:

35 Each of the following acts or practices is unlawful:

36 (1) To cause or permit to be advertised, printed, displayed,  
37 published, distributed, broadcasted, televised, or disseminated in any

1 manner whatsoever, any statement or representation with regard to the  
2 sale or financing of a vehicle which is false, deceptive, or  
3 misleading, including but not limited to the following:

4 (a) That no down payment is required in connection with the sale of  
5 a vehicle when a down payment is in fact required, or that a vehicle  
6 may be purchased for a smaller down payment than is actually required;

7 (b) That a certain percentage of the sale price of a vehicle may be  
8 financed when such financing is not offered in a single document  
9 evidencing the entire security transaction;

10 (c) That a certain percentage is the amount of the service charge  
11 to be charged for financing, without stating whether this percentage  
12 charge is a monthly amount or an amount to be charged per year;

13 (d) That a new vehicle will be sold for a certain amount above or  
14 below cost without computing cost as the exact amount of the factory  
15 invoice on the specific vehicle to be sold;

16 (e) That a vehicle will be sold upon a monthly payment of a certain  
17 amount, without including in the statement the number of payments of  
18 that same amount which are required to liquidate the unpaid purchase  
19 price.

20 (2) To incorporate within the terms of any purchase and sale  
21 agreement any statement or representation with regard to the sale or  
22 financing of a vehicle which is false, deceptive, or misleading,  
23 including but not limited to terms that include as an added cost to the  
24 selling price of a vehicle an amount for licensing or transfer of title  
25 of that vehicle which is not actually due to the state, unless such  
26 amount has in fact been paid by the dealer prior to such sale.

27 (3) To set up, promote, or aid in the promotion of a plan by which  
28 vehicles are to be sold to a person for a consideration and upon  
29 further consideration that the purchaser agrees to secure one or more  
30 persons to participate in the plan by respectively making a similar  
31 purchase and in turn agreeing to secure one or more persons likewise to  
32 join in said plan, each purchaser being given the right to secure  
33 money, credits, goods, or something of value, depending upon the number  
34 of persons joining the plan.

35 (4) To commit, allow, or ratify any act of "bushing" which is  
36 defined as follows: Taking from a prospective buyer of a vehicle a  
37 written order or offer to purchase, or a contract document signed by  
38 the buyer, which:

1 (a) Is subject to the dealer's, or his or her authorized  
2 representative's future acceptance, and the dealer fails or refuses  
3 within three calendar days, exclusive of Saturday, Sunday, or legal  
4 holiday, and prior to any further negotiations with said buyer, either  
5 (i) to deliver to the buyer the dealer's signed acceptance, or (ii) to  
6 void the order, offer, or contract document and tender the return of  
7 any initial payment or security made or given by the buyer, including  
8 but not limited to money, check, promissory note, vehicle keys, a  
9 trade-in, or certificate of title to a trade-in; or

10 (b) Permits the dealer to renegotiate a dollar amount specified as  
11 trade-in allowance on a vehicle delivered or to be delivered by the  
12 buyer as part of the purchase price, for any reason except:

13 (i) Failure to disclose that the vehicle's certificate of ownership  
14 has been branded for any reason, including, but not limited to, status  
15 as a rebuilt vehicle as provided in RCW 46.12.050 and 46.12.075; or

16 (ii) Substantial physical damage or latent mechanical defect  
17 occurring before the dealer took possession of the vehicle and which  
18 could not have been reasonably discoverable at the time of the taking  
19 of the order, offer, or contract; or

20 (iii) Excessive additional miles or a discrepancy in the mileage.  
21 "Excessive additional miles" means the addition of five hundred miles  
22 or more, as reflected on the vehicle's odometer, between the time the  
23 vehicle was first valued by the dealer for purposes of determining its  
24 trade-in value and the time of actual delivery of the vehicle to the  
25 dealer. "A discrepancy in the mileage" means (A) a discrepancy between  
26 the mileage reflected on the vehicle's odometer and the stated mileage  
27 on the signed odometer statement; or (B) a discrepancy between the  
28 mileage stated on the signed odometer statement and the actual mileage  
29 on the vehicle; or

30 (c) Fails to comply with the obligation of any written warranty or  
31 guarantee given by the dealer requiring the furnishing of services or  
32 repairs within a reasonable time.

33 (5) To commit any offense relating to odometers, as such offenses  
34 are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A  
35 violation of this subsection is a class C felony punishable under  
36 chapter 9A.20 RCW.

37 (6) For any vehicle dealer or vehicle salesperson to refuse to  
38 furnish, upon request of a prospective purchaser, for vehicles

1 previously registered to a business or governmental entity, the name  
2 and address of the business or governmental entity.

3 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or  
4 46.37.425.

5 (8) To commit any offense relating to a dealer's temporary license  
6 permit, including but not limited to failure to properly complete each  
7 such permit, or the issuance of more than one such permit on any one  
8 vehicle. However, a dealer may issue a second temporary permit on a  
9 vehicle if the following conditions are met:

10 (a) The lienholder fails to deliver the vehicle title to the dealer  
11 within the required time period;

12 (b) The dealer has satisfied the lien; and

13 (c) The dealer has proof that payment of the lien was made within  
14 two calendar days, exclusive of Saturday, Sunday, or a legal holiday,  
15 after the sales contract has been executed by all parties and all  
16 conditions and contingencies in the sales contract have been met or  
17 otherwise satisfied.

18 (9) For a dealer, salesman, or mobile home manufacturer, having  
19 taken an instrument or cash "on deposit" from a purchaser prior to the  
20 delivery of the bargained-for vehicle, to commingle the "on deposit"  
21 funds with assets of the dealer, salesman, or mobile home manufacturer  
22 instead of holding the "on deposit" funds as trustee in a separate  
23 trust account until the purchaser has taken delivery of the bargained-  
24 for vehicle. Delivery of a manufactured home shall be deemed to occur  
25 in accordance with RCW 46.70.135(5). Failure, immediately upon  
26 receipt, to endorse "on deposit" instruments to such a trust account,  
27 or to set aside "on deposit" cash for deposit in such trust account,  
28 and failure to deposit such instruments or cash in such trust account  
29 by the close of banking hours on the day following receipt thereof,  
30 shall be evidence of intent to commit this unlawful practice:  
31 PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate  
32 trust account which equals his or her customary total customer deposits  
33 for vehicles for future delivery. For purposes of this section, "on  
34 deposit" funds received from a purchaser of a manufactured home means  
35 those funds that a seller requires a purchaser to advance before  
36 ordering the manufactured home, but does not include any loan proceeds  
37 or moneys that might have been paid on an installment contract.

38 (10) For a dealer or manufacturer to fail to comply with the  
39 obligations of any written warranty or guarantee given by the dealer or

1 manufacturer requiring the furnishing of goods and services or repairs  
2 within a reasonable period of time, or to fail to furnish to a  
3 purchaser, all parts which attach to the manufactured unit including  
4 but not limited to the undercarriage, and all items specified in the  
5 terms of a sales agreement signed by the seller and buyer.

6 (11) For a vehicle dealer to pay to or receive from any person,  
7 firm, partnership, association, or corporation acting, either directly  
8 or through a subsidiary, as a buyer's agent for consumers, any  
9 compensation, fee, purchase moneys or funds that have been deposited  
10 into or withdrawn out of any account controlled or used by any buyer's  
11 agent, gratuity, or reward in connection with the purchase or sale of  
12 a new motor vehicle.

13 (12) For a buyer's agent, acting directly or through a subsidiary,  
14 to pay to or to receive from any motor vehicle dealer any compensation,  
15 fee, gratuity, or reward in connection with the purchase or sale of a  
16 new motor vehicle. In addition, it is unlawful for any buyer's agent  
17 to engage in any of the following acts on behalf of or in the name of  
18 the consumer:

19 (a) Receiving or paying any purchase moneys or funds into or out of  
20 any account controlled or used by any buyer's agent;

21 (b) Signing any vehicle purchase orders, sales contract, odometer  
22 statements, or title documents, or having the name of the buyer's agent  
23 appear on the vehicle purchase order, sales contract, or title; or

24 (c) Signing any other documentation relating to the purchase, sale,  
25 or transfer of any new motor vehicle.

26 It is unlawful for a buyer's agent to use a power of attorney  
27 obtained from the consumer to accomplish or effect the purchase, sale,  
28 or transfer of ownership documents of any new motor vehicle by any  
29 means which would otherwise be prohibited under (a) through (c) of this  
30 subsection. However, the buyer's agent may use a power of attorney for  
31 physical delivery of motor vehicle license plates to the consumer.

32 Further, it is unlawful for a buyer's agent to engage in any false,  
33 deceptive, or misleading advertising, disseminated in any manner  
34 whatsoever, including but not limited to making any claim or statement  
35 that the buyer's agent offers, obtains, or guarantees the lowest price  
36 on any motor vehicle or words to similar effect.

37 (13) For a buyer's agent to arrange for or to negotiate the  
38 purchase, or both, of a new motor vehicle through an out-of-state  
39 dealer without disclosing in writing to the customer that the new

1 vehicle would not be subject to chapter 19.118 RCW. In addition, it is  
2 unlawful for any buyer's agent to fail to have a written agreement with  
3 the customer that: (a) Sets forth the terms of the parties' agreement;  
4 (b) discloses to the customer the total amount of any fees or other  
5 compensation being paid by the customer to the buyer's agent for the  
6 agent's services; and (c) further discloses whether the fee or any  
7 portion of the fee is refundable. The department of licensing shall by  
8 December 31, 1996, in rule, adopt standard disclosure language for  
9 buyer's agent agreements under RCW 46.70.011, 46.70.070, and this  
10 section.

11 (14) Being a manufacturer, other than a motorcycle manufacturer  
12 governed by chapter 46.94 RCW, to:

13 (a) Coerce or attempt to coerce any vehicle dealer to order or  
14 accept delivery of any vehicle or vehicles, parts or accessories, or  
15 any other commodities which have not been voluntarily ordered by the  
16 vehicle dealer: PROVIDED, That recommendation, endorsement,  
17 exposition, persuasion, urging, or argument are not deemed to  
18 constitute coercion;

19 (b) Cancel or fail to renew the franchise or selling agreement of  
20 any vehicle dealer doing business in this state without fairly  
21 compensating the dealer at a fair going business value for his or her  
22 capital investment which shall include but not be limited to tools,  
23 equipment, and parts inventory possessed by the dealer on the day he or  
24 she is notified of such cancellation or termination and which are still  
25 within the dealer's possession on the day the cancellation or  
26 termination is effective, if: (i) The capital investment has been  
27 entered into with reasonable and prudent business judgment for the  
28 purpose of fulfilling the franchise; and (ii) the cancellation or  
29 nonrenewal was not done in good faith. Good faith is defined as the  
30 duty of each party to any franchise to act in a fair and equitable  
31 manner towards each other, so as to guarantee one party freedom from  
32 coercion, intimidation, or threats of coercion or intimidation from the  
33 other party: PROVIDED, That recommendation, endorsement, exposition,  
34 persuasion, urging, or argument are not deemed to constitute a lack of  
35 good faith.

36 (c) Encourage, aid, abet, or teach a vehicle dealer to sell  
37 vehicles through any false, deceptive, or misleading sales or financing  
38 practices including but not limited to those practices declared  
39 unlawful in this section;

1 (d) Coerce or attempt to coerce a vehicle dealer to engage in any  
2 practice forbidden in this section by either threats of actual  
3 cancellation or failure to renew the dealer's franchise agreement;

4 (e) Refuse to deliver any vehicle publicly advertised for immediate  
5 delivery to any duly licensed vehicle dealer having a franchise or  
6 contractual agreement for the retail sale of new and unused vehicles  
7 sold or distributed by such manufacturer within sixty days after such  
8 dealer's order has been received in writing unless caused by inability  
9 to deliver because of shortage or curtailment of material, labor,  
10 transportation, or utility services, or by any labor or production  
11 difficulty, or by any cause beyond the reasonable control of the  
12 manufacturer;

13 (f) To provide under the terms of any warranty that a purchaser of  
14 any new or unused vehicle that has been sold, distributed for sale, or  
15 transferred into this state for resale by the vehicle manufacturer may  
16 only make any warranty claim on any item included as an integral part  
17 of the vehicle against the manufacturer of that item.

18 Nothing in this section may be construed to impair the obligations  
19 of a contract or to prevent a manufacturer, distributor,  
20 representative, or any other person, whether or not licensed under this  
21 chapter, from requiring performance of a written contract entered into  
22 with any licensee hereunder, nor does the requirement of such  
23 performance constitute a violation of any of the provisions of this  
24 section if any such contract or the terms thereof requiring  
25 performance, have been freely entered into and executed between the  
26 contracting parties. This paragraph and subsection (14)(b) of this  
27 section do not apply to new motor vehicle manufacturers governed by  
28 chapter 46.96 RCW.

29 (15) Unlawful transfer of an ownership interest in a motor vehicle  
30 as defined in RCW 19.116.050.

31 (16) To knowingly and intentionally engage in collusion with a  
32 registered owner of a vehicle to repossess and return or resell the  
33 vehicle to the registered owner in an attempt to avoid a long-term  
34 impound under chapter 46.55 RCW. However, compliance with chapter  
35 62A.9 RCW in repossessing, selling, leasing, or otherwise disposing of  
36 the vehicle, including providing redemption rights to the debtor, is  
37 not a violation of this section."

1 **SB 5649** - S AMD - 047

2 By Senator Haugen

3

ADOPTED 3/11/99

4 On page 1, line 1 of the title, after "to" strike the remainder of  
5 the title, and insert "vehicle impound notices, security, and auctions;  
6 amending RCW 18.11.070, 46.55.010, 46.55.080, 46.55.100, 46.55.110,  
7 46.55.120, 46.55.130, 46.61.625, and 46.70.180; and adding a new  
8 section to chapter 46.55 RCW."

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