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ENGROSSED SENATE BILL 5649

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State of Washington                      56th Legislature                      1999 Regular Session

By Senators Haugen, Sellar and Goings

Read first time 02/01/1999. Referred to Committee on Transportation.

1            AN ACT Relating to vehicle impound notices, security, and auctions;  
2 amending RCW 18.11.070, 46.55.010, 46.55.080, 46.55.100, 46.55.110,  
3 46.55.120, 46.55.130, 46.61.625, and 46.70.180; and adding a new  
4 section to chapter 46.55 RCW.

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

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

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

11            (2) This chapter does not apply to:

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

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

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

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

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

4 (f) An auction of livestock or agricultural products which is  
5 conducted under chapter 16.65 or 20.01 RCW. Auctions not regulated  
6 under chapter 16.65 or 20.01 RCW shall be fully subject to the  
7 provisions of this chapter;

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

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

10 (i) An auction of fur pelts conducted by any cooperative  
11 association organized under chapter 23.86 RCW or its wholly owned  
12 subsidiary. In order to qualify for this exemption, the fur pelts must  
13 be from members of the association. However, the association, without  
14 loss of the exemption, may auction pelts that it purchased from  
15 nonmembers for the purpose of completing lots or orders, so long as the  
16 purchased pelts do not exceed fifteen percent of the total pelts  
17 auctioned.

18 **Sec. 2.** RCW 46.55.010 and 1998 c 203 s 8 are each amended to read  
19 as follows:

20 The definitions set forth in this section apply throughout this  
21 chapter:

22 (1) "Abandoned vehicle" means a vehicle that a registered tow truck  
23 operator has impounded and held in the operator's possession for one  
24 hundred twenty consecutive hours.

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

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

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

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

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

- 1 (a) Is three years old or older;
- 2 (b) Is extensively damaged, such damage including but not limited  
3 to any of the following: A broken window or windshield, or missing  
4 wheels, tires, motor, or transmission;
- 5 (c) Is apparently inoperable;
- 6 (d) Has an approximate fair market value equal only to the  
7 approximate value of the scrap in it.
- 8 (5) "Long-term impound" means an impound for up to thirty, sixty,  
9 or ninety days ordered under RCW 46.55.120 because the driver was in  
10 violation of RCW 46.20.342.
- 11 (6) "Master log" means the document or an electronic facsimile  
12 prescribed by the department and the Washington state patrol in which  
13 an operator records transactions involving impounded vehicles.
- 14 ((+6)) (7) "Registered tow truck operator" or "operator" means any  
15 person who engages in the impounding, transporting, or storage of  
16 unauthorized vehicles or the disposal of abandoned vehicles.
- 17 ((+7)) (8) "Residential property" means property that has no more  
18 than four living units located on it.
- 19 ((+8)) (9) "Tow truck" means a motor vehicle that is equipped for  
20 and used in the business of towing vehicles with equipment as approved  
21 by the state patrol.
- 22 ((+9)) (10) "Tow truck number" means the number issued by the  
23 department to tow trucks used by a registered tow truck operator in the  
24 state of Washington.
- 25 ((+10)) (11) "Tow truck permit" means the permit issued annually  
26 by the department that has the classification of service the tow truck  
27 may provide stamped upon it.
- 28 ((+11)) (12) "Tow truck service" means the transporting upon the  
29 public streets and highways of this state of vehicles, together with  
30 personal effects and cargo, by a tow truck of a registered operator.
- 31 ((+12)) (13) "Unauthorized vehicle" means a vehicle that is  
32 subject to impoundment after being left unattended in one of the  
33 following public or private locations for the indicated period of time:

34 *Subject to removal after:*

35 (a) *Public locations:*

36 (i) *Constituting an accident or a traffic hazard as*

37 *defined in RCW 46.55.113 . . . . . Immediately*

- 1                   (ii) *On a highway and tagged as described in RCW*
- 2                         *46.55.085 . . . . . 24 hours*
- 3                   (iii) *In a publicly owned or controlled parking facility,*
- 4                         *properly posted under RCW*
- 5                         *46.55.070 . . . . . Immediately*
- 6                   (b) *Private locations:*
- 7                         (i) *On residential property . . . . . Immediately*
- 8                         (ii) *On private, nonresidential property, properly*
- 9                                 *posted under RCW 46.55.070 . . . . . Immediately*
- 10                   (iii) *On private, nonresidential property,*
- 11                                 *not posted . . . . . 24 hours*

12           NEW SECTION.   **Sec. 3.** A new section is added to chapter 46.55 RCW  
 13 to read as follows:

14           The Washington state patrol shall provide by rule for a uniform  
 15 impound authorization and inventory form. All law enforcement agencies  
 16 must use this form for all vehicle impounds after June 30, 2001.

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

19           (1) If a vehicle is in violation of the time restrictions of RCW  
 20 46.55.010(~~((+12+))~~) (13), it may be impounded by a registered tow truck  
 21 operator at the direction of a law enforcement officer or other public  
 22 official with jurisdiction if the vehicle is on public property, or at  
 23 the direction of the property owner or an agent if it is on private  
 24 property. A law enforcement officer may also direct the impoundment of  
 25 a vehicle pursuant to a writ or court order.

26           (2) The person requesting a private impound or a law enforcement  
 27 officer or public official requesting a public impound shall provide a  
 28 signed authorization for the impound at the time and place of the  
 29 impound to the registered tow truck operator before the operator may  
 30 proceed with the impound. A registered tow truck operator, employee,  
 31 or his or her agent may not serve as an agent of a property owner for  
 32 the purposes of signing an impound authorization or, independent of the  
 33 property owner, identify a vehicle for impound.

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

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

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

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

13 (1) At the time of impoundment the registered tow truck operator  
14 providing the towing service shall give immediate notification, by  
15 telephone or radio, to a law enforcement agency having jurisdiction who  
16 shall maintain a log of such reports. A law enforcement agency, or a  
17 private communication center acting on behalf of a law enforcement  
18 agency, shall within six to twelve hours of the impoundment, provide to  
19 a requesting operator the name and address of the legal and registered  
20 owners of the vehicle, and the registered owner of any personal  
21 property registered or titled with the department that is attached to  
22 or contained in or on the impounded vehicle, the vehicle identification  
23 number, and any other necessary, pertinent information. The initial  
24 notice of impoundment shall be followed by a written or electronic  
25 facsimile notice within twenty-four hours. In the case of a vehicle  
26 from another state, time requirements of this subsection do not apply  
27 until the requesting law enforcement agency in this state receives the  
28 information.

29 (2) The operator shall immediately send an abandoned vehicle report  
30 to the department for any vehicle, and for any items of personal  
31 property registered or titled with the department, that are in the  
32 operator's possession after the one hundred twenty hour abandonment  
33 period. Such report need not be sent when the impoundment is pursuant  
34 to a writ, court order, or police hold other than a long-term impound.  
35 The owner notification and abandonment process shall be initiated by  
36 the registered tow truck operator immediately following notification by  
37 a court or law enforcement officer that the writ, court order, or  
38 police hold other than a long-term impound is no longer in effect.

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

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

10 (5) If the operator sends an abandoned vehicle report to the  
11 department and the department finds no owner information, an operator  
12 may proceed with an inspection of the vehicle and any other items of  
13 personal property registered or titled with the department to determine  
14 whether owner identification is within the vehicle.

15 (6) If the operator finds no owner identification, the operator  
16 shall immediately notify the appropriate law enforcement agency, which  
17 shall search the vehicle and any other items of personal property  
18 registered or titled with the department for the vehicle identification  
19 number or other appropriate identification numbers and check the  
20 necessary records to determine the vehicle's or other property's  
21 owners.

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

24 (1) When an unauthorized vehicle is impounded, the impounding  
25 towing operator shall notify the legal and registered owners of the  
26 impoundment of the unauthorized vehicle and the owners of any other  
27 items of personal property registered or titled with the department.  
28 The notification shall be sent by first-class mail within twenty-four  
29 hours after the impoundment to the last known registered and legal  
30 owners of the vehicle, and the owners of any other items of personal  
31 property registered or titled with the department, as provided by the  
32 law enforcement agency, and shall inform the owners of the identity of  
33 the person or agency authorizing the impound. The notification shall  
34 include the name of the impounding tow firm, its address, and telephone  
35 number. The notice shall also include the location, time of the  
36 impound, and by whose authority the vehicle was impounded. The notice  
37 shall also include the written notice of the right of redemption and

1 opportunity for a hearing to contest the validity of the impoundment  
2 pursuant to RCW 46.55.120.

3       (2) In addition, if a long-term impound has been ordered, the  
4 notice must state the length of the impound, the requirement of the  
5 posting of a security deposit to ensure payment of the costs of  
6 removal, towing, and storage, notification that if the security deposit  
7 is not posted the vehicle will immediately be processed and sold at  
8 auction as an abandoned vehicle, and the requirements set out in RCW  
9 46.55.120(1)(b) regarding the payment of the costs of removal, towing,  
10 and storage as well as providing proof of satisfaction of any  
11 penalties, fines, or forfeitures before redemption. The notice must  
12 also state that the registered owner is ineligible to purchase the  
13 vehicle at the abandoned vehicle auction, if held.

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

20       (~~(3)~~) (4) If the date on which a notice required by subsection  
21 (~~(2)~~) (3) of this section is to be mailed falls upon a Saturday,  
22 Sunday, or a postal holiday, the notice may be mailed on the next day  
23 that is neither a Saturday, Sunday, nor a postal holiday.

24       (~~(4)~~) (5) No notices need be sent to the legal or registered  
25 owners of an impounded vehicle or other item of personal property  
26 registered or titled with the department, if the vehicle or personal  
27 property has been redeemed.

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

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

34       (a) Only the legal owner, the registered owner, a person authorized  
35 in writing by the registered owner or the vehicle's insurer, a person  
36 who is determined and verified by the operator to have the permission  
37 of the registered owner of the vehicle or other item of personal  
38 property registered or titled with the department, or one who has

1 purchased a vehicle or item of personal property registered or titled  
2 with the department from the registered owner who produces proof of  
3 ownership or written authorization and signs a receipt therefor, may  
4 redeem an impounded vehicle or items of personal property registered or  
5 titled with the department. In addition, a vehicle impounded because  
6 the operator is in violation of RCW 46.20.342(1)(c) shall not be  
7 released until a person eligible to redeem it under this subsection  
8 (1)(a) satisfies the requirements of (~~(b)~~) (e) of this subsection,  
9 including paying all towing, removal, and storage fees, notwithstanding  
10 the fact that the hold was ordered by a government agency. If the  
11 department's records show that the operator has been convicted of a  
12 violation of RCW 46.20.342 or a similar local ordinance within the past  
13 five years, the vehicle may be held for up to thirty days at the  
14 written direction of the agency ordering the vehicle impounded. A  
15 vehicle impounded because the operator is arrested for a violation of  
16 RCW 46.20.342 may be released only pursuant to a written order from the  
17 agency that ordered the vehicle impounded. An agency may issue a  
18 written order to release pursuant to a provision of an applicable state  
19 agency rule or local ordinance authorizing release on the basis of  
20 economic or personal hardship to the spouse of the operator, taking  
21 into consideration public safety factors, including the operator's  
22 criminal history and driving record.

23 If a vehicle is impounded because the operator is in violation of  
24 RCW 46.20.342(1) (a) or (b), the vehicle may be held for up to thirty  
25 days at the written direction of the agency ordering the vehicle  
26 impounded. However, if the department's records show that the operator  
27 has been convicted of a violation of RCW 46.20.342(1) (a) or (b) or a  
28 similar local ordinance within the past five years, the vehicle may be  
29 held at the written direction of the agency ordering the vehicle  
30 impounded for up to sixty days, and for up to ninety days if the  
31 operator has two or more such prior offenses. If a vehicle is  
32 impounded because the operator is arrested for a violation of RCW  
33 46.20.342, the vehicle may not be released until a person eligible to  
34 redeem it under this subsection (1)(a) satisfies the requirements of  
35 (~~(b)~~) (e) of this subsection, including paying all towing, removal,  
36 and storage fees, notwithstanding the fact that the hold was ordered by  
37 a government agency.

38 (b) If the vehicle is directed to be held for a long-term impound,  
39 a person who desires to redeem the vehicle at the end of the period of



1 impound shall within five days of the impound at the request of the tow  
2 truck operator pay a security deposit to the tow truck operator of not  
3 more than one-half of the applicable impound storage rate for each day  
4 of the proposed long-term impound. The tow truck operator shall credit  
5 this amount against the final bill for removal, towing, and storage  
6 upon redemption. The tow truck operator may accept other sufficient  
7 security in lieu of the security deposit. If the person desiring to  
8 redeem the vehicle does not pay the security deposit or provide other  
9 security acceptable to the tow truck operator, the tow truck operator  
10 may process and sell at auction the vehicle as an abandoned vehicle  
11 within the normal time limits set out in RCW 46.55.130(1). The  
12 security deposit required by this section may be paid and must be  
13 accepted at any time up to twenty-four hours before the beginning of  
14 the auction to sell the vehicle as abandoned. The registered owner is  
15 not eligible to purchase the vehicle at the auction, and the tow truck  
16 operator shall sell the vehicle to the highest bidder who is not the  
17 registered owner.

18 (c) Notwithstanding (b) of this subsection, a rental car business  
19 may immediately redeem a rental vehicle it owns by payment of the costs  
20 of removal, towing, and storage, whereupon the vehicle will not be held  
21 for a long-term impound.

22 (d) Notwithstanding (b) of this subsection, a motor vehicle dealer  
23 or lender with a perfected security interest in the vehicle may redeem  
24 or lawfully repossess a vehicle immediately by payment of the costs of  
25 removal, towing, and storage, whereupon the vehicle will not be held  
26 for a long-term impound. A motor vehicle dealer or lender with a  
27 perfected security interest in the vehicle may not knowingly and  
28 intentionally engage in collusion with a registered owner to repossess  
29 and then return or resell a vehicle to the registered owner in an  
30 attempt to avoid a long-term impound. However, this provision does not  
31 preclude a vehicle dealer or lender with a perfected security interest  
32 in the vehicle from repossessing the vehicle and then selling, leasing,  
33 or otherwise disposing of it in accordance with chapter 62A.9 RCW,  
34 including providing redemption rights to the debtor under RCW 62A.9-  
35 506.

36 (e) The vehicle or other item of personal property registered or  
37 titled with the department shall be released upon the presentation to  
38 any person having custody of the vehicle of commercially reasonable  
39 tender sufficient to cover the costs of towing, storage, or other

1 services rendered during the course of towing, removing, impounding, or  
2 storing any such vehicle, with credit being given for the amount of any  
3 security deposit paid under (b) of this subsection. In addition, if a  
4 vehicle is impounded because the operator was arrested for a violation  
5 of RCW 46.20.342 or 46.20.420 and was being operated by the registered  
6 owner when it was impounded, it must not be released to any person  
7 until the registered owner establishes with the (~~agency that ordered~~  
8 ~~the vehicle impounded~~) court having jurisdiction that any penalties,  
9 fines, or forfeitures owed by him or her as a result of the impound  
10 have been satisfied. Commercially reasonable tender shall include,  
11 without limitation, cash, major bank credit cards, or personal checks  
12 drawn on in-state banks if accompanied by two pieces of valid  
13 identification, one of which may be required by the operator to have a  
14 photograph. If the towing firm can determine through the customer's  
15 bank or a check verification service that the presented check would not  
16 be paid by the bank or guaranteed by the service, the towing firm may  
17 refuse to accept the check. Any person who stops payment on a personal  
18 check or credit card, or does not make restitution within ten days from  
19 the date a check becomes insufficient due to lack of funds, to a towing  
20 firm that has provided a service pursuant to this section or in any  
21 other manner defrauds the towing firm in connection with services  
22 rendered pursuant to this section shall be liable for damages in the  
23 amount of twice the towing and storage fees, plus costs and reasonable  
24 attorney's fees.

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

34 (b) Any person seeking to redeem an impounded vehicle under this  
35 section has a right to a hearing in the district or municipal court for  
36 the jurisdiction in which the vehicle was impounded to contest the  
37 validity of the impoundment or the amount of towing and storage  
38 charges. The district court has jurisdiction to determine the issues  
39 involving all impoundments including those authorized by the state or

1 its agents. The municipal court has jurisdiction to determine the  
2 issues involving impoundments authorized by agents of the municipality.  
3 Any request for a hearing shall be made in writing on the form provided  
4 for that purpose and must be received by the appropriate court within  
5 ten days of the date the opportunity was provided for in subsection  
6 (2)(a) of this section and more than five days before the date of the  
7 auction. At the time of the filing of the hearing request, the  
8 petitioner shall pay to the court clerk a filing fee in the same amount  
9 required for the filing of a suit in district court. If the hearing  
10 request is not received by the court within the ten-day period, the  
11 right to a hearing is waived and the registered owner is liable for any  
12 towing, storage, or other impoundment charges permitted under this  
13 chapter. Upon receipt of a timely hearing request, the court shall  
14 proceed to hear and determine the validity of the impoundment.

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

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

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

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

38 (e) If the impoundment is determined to be in violation of this  
39 chapter, then the registered and legal owners of the vehicle or other

1 item of personal property registered or titled with the department  
2 shall bear no impoundment, towing, or storage fees, and any security  
3 shall be returned or discharged as appropriate, and the person or  
4 agency who authorized the impoundment shall be liable for any towing,  
5 storage, or other impoundment fees permitted under this chapter. The  
6 court shall enter judgment in favor of the registered tow truck  
7 operator against the person or agency authorizing the impound for the  
8 impoundment, towing, and storage fees paid. In addition, the court  
9 shall enter judgment in favor of the registered and legal owners of the  
10 vehicle, or other item of personal property registered or titled with  
11 the department, for the amount of the filing fee required by law for  
12 the impound hearing petition as well as reasonable damages for loss of  
13 the use of the vehicle during the time the same was impounded, for not  
14 less than fifty dollars per day, against the person or agency  
15 authorizing the impound. However, if an impoundment arising from an  
16 alleged violation of RCW 46.20.342 or 46.20.420 is determined to be in  
17 violation of this chapter, then the law enforcement officer directing  
18 the impoundment and the government employing the officer are not liable  
19 for damages if the officer relied in good faith and without gross  
20 negligence on the records of the department in ascertaining that the  
21 operator of the vehicle had a suspended or revoked driver's license.  
22 If any judgment entered is not paid within fifteen days of notice in  
23 writing of its entry, the court shall award reasonable attorneys' fees  
24 and costs against the defendant in any action to enforce the judgment.  
25 Notice of entry of judgment may be made by registered or certified  
26 mail, and proof of mailing may be made by affidavit of the party  
27 mailing the notice. Notice of the entry of the judgment shall read  
28 essentially as follows:

29 TO: . . . . .  
30 YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the  
31 . . . . . Court located at . . . . . in the sum of  
32 \$. . . . ., in an action entitled . . . . ., Case No.  
33 . . . . YOU ARE FURTHER NOTIFIED that attorneys fees and costs  
34 will be awarded against you under RCW . . . if the judgment is  
35 not paid within 15 days of the date of this notice.  
36 DATED this . . . . day of . . . . ., (year) . . .

1 Signature . . . . .  
2 Typed name and address  
3 of party mailing notice

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

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

14 (1) If, after the expiration of fifteen days from the date of  
15 mailing of notice of custody and sale required in RCW 46.55.110(~~(+2)~~)  
16 (3) to the registered and legal owners, the vehicle remains unclaimed  
17 and has not been listed as a stolen vehicle, or for which a long-term  
18 impound has been directed but no security paid under RCW 46.55.120,  
19 then the registered tow truck operator having custody of the vehicle  
20 shall conduct a sale of the vehicle at public auction after having  
21 first published a notice of the date, place, and time of the auction in  
22 a newspaper of general circulation in the county in which the vehicle  
23 is located not less than three days and no more than ten days before  
24 the date of the auction. The notice shall contain a description of the  
25 vehicle including the make, model, year, and license number and a  
26 notification that a three-hour public viewing period will be available  
27 before the auction. The auction shall be held during daylight hours of  
28 a normal business day.

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

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

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

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

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

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

8 (f) The successful bidder shall apply for title within fifteen  
9 days;

10 (g) The registered tow truck operator shall post a copy of the  
11 auction procedure at the bidding site. If the bidding site is  
12 different from the licensed office location, the operator shall post a  
13 clearly visible sign at the office location that describes in detail  
14 where the auction will be held. At the bidding site a copy of the  
15 newspaper advertisement that lists the vehicles for sale shall be  
16 posted;

17 (h) All surplus moneys derived from the auction after satisfaction  
18 of the registered tow truck operator's lien shall be remitted within  
19 thirty days to the ~~((department for deposit in the state motor vehicle  
20 fund. A report identifying the vehicles resulting in any surplus shall  
21 accompany the remitted funds. If the director subsequently receives a  
22 valid claim from the))~~ registered vehicle owner of record as determined  
23 by the department ~~((within one year from the date of the auction, the  
24 surplus moneys shall be remitted to such owner))~~;

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

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

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

36 (b) The failure of the registered tow truck operator to comply with  
37 the time limits provided in this chapter limits the accumulation of  
38 storage charges to five days except where delay is unavoidable.  
39 Providing incorrect or incomplete identifying information to the

1 department in the abandoned vehicle report shall be considered a  
2 failure to comply with these time limits if correct information is  
3 available. However, storage charges begin to accrue again on the date  
4 the correct and complete information is provided to the department by  
5 the registered tow truck operator.

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

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

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

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

16 Each of the following acts or practices is unlawful:

17 (1) To cause or permit to be advertised, printed, displayed,  
18 published, distributed, broadcasted, televised, or disseminated in any  
19 manner whatsoever, any statement or representation with regard to the  
20 sale or financing of a vehicle which is false, deceptive, or  
21 misleading, including but not limited to the following:

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

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

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

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

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

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

8 (3) To set up, promote, or aid in the promotion of a plan by which  
9 vehicles are to be sold to a person for a consideration and upon  
10 further consideration that the purchaser agrees to secure one or more  
11 persons to participate in the plan by respectively making a similar  
12 purchase and in turn agreeing to secure one or more persons likewise to  
13 join in said plan, each purchaser being given the right to secure  
14 money, credits, goods, or something of value, depending upon the number  
15 of persons joining the plan.

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

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

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

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

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



1 (iii) Excessive additional miles or a discrepancy in the mileage.  
2 "Excessive additional miles" means the addition of five hundred miles  
3 or more, as reflected on the vehicle's odometer, between the time the  
4 vehicle was first valued by the dealer for purposes of determining its  
5 trade-in value and the time of actual delivery of the vehicle to the  
6 dealer. "A discrepancy in the mileage" means (A) a discrepancy between  
7 the mileage reflected on the vehicle's odometer and the stated mileage  
8 on the signed odometer statement; or (B) a discrepancy between the  
9 mileage stated on the signed odometer statement and the actual mileage  
10 on the vehicle; or

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

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

18 (6) For any vehicle dealer or vehicle salesperson to refuse to  
19 furnish, upon request of a prospective purchaser, for vehicles  
20 previously registered to a business or governmental entity, the name  
21 and address of the business or governmental entity.

22 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or  
23 46.37.425.

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

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

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

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

37 (9) For a dealer, salesman, or mobile home manufacturer, having  
38 taken an instrument or cash "on deposit" from a purchaser prior to the  
39 delivery of the bargained-for vehicle, to commingle the "on deposit"

1 funds with assets of the dealer, salesman, or mobile home manufacturer  
2 instead of holding the "on deposit" funds as trustee in a separate  
3 trust account until the purchaser has taken delivery of the bargained-  
4 for vehicle. Delivery of a manufactured home shall be deemed to occur  
5 in accordance with RCW 46.70.135(5). Failure, immediately upon  
6 receipt, to endorse "on deposit" instruments to such a trust account,  
7 or to set aside "on deposit" cash for deposit in such trust account,  
8 and failure to deposit such instruments or cash in such trust account  
9 by the close of banking hours on the day following receipt thereof,  
10 shall be evidence of intent to commit this unlawful practice:  
11 PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate  
12 trust account which equals his or her customary total customer deposits  
13 for vehicles for future delivery. For purposes of this section, "on  
14 deposit" funds received from a purchaser of a manufactured home means  
15 those funds that a seller requires a purchaser to advance before  
16 ordering the manufactured home, but does not include any loan proceeds  
17 or moneys that might have been paid on an installment contract.

18 (10) For a dealer or manufacturer to fail to comply with the  
19 obligations of any written warranty or guarantee given by the dealer or  
20 manufacturer requiring the furnishing of goods and services or repairs  
21 within a reasonable period of time, or to fail to furnish to a  
22 purchaser, all parts which attach to the manufactured unit including  
23 but not limited to the undercarriage, and all items specified in the  
24 terms of a sales agreement signed by the seller and buyer.

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

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

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

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

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

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

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

17 (13) For a buyer's agent to arrange for or to negotiate the  
18 purchase, or both, of a new motor vehicle through an out-of-state  
19 dealer without disclosing in writing to the customer that the new  
20 vehicle would not be subject to chapter 19.118 RCW. In addition, it is  
21 unlawful for any buyer's agent to fail to have a written agreement with  
22 the customer that: (a) Sets forth the terms of the parties' agreement;  
23 (b) discloses to the customer the total amount of any fees or other  
24 compensation being paid by the customer to the buyer's agent for the  
25 agent's services; and (c) further discloses whether the fee or any  
26 portion of the fee is refundable. The department of licensing shall by  
27 December 31, 1996, in rule, adopt standard disclosure language for  
28 buyer's agent agreements under RCW 46.70.011, 46.70.070, and this  
29 section.

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

32 (a) Coerce or attempt to coerce any vehicle dealer to order or  
33 accept delivery of any vehicle or vehicles, parts or accessories, or  
34 any other commodities which have not been voluntarily ordered by the  
35 vehicle dealer: PROVIDED, That recommendation, endorsement,  
36 exposition, persuasion, urging, or argument are not deemed to  
37 constitute coercion;

38 (b) Cancel or fail to renew the franchise or selling agreement of  
39 any vehicle dealer doing business in this state without fairly

1 compensating the dealer at a fair going business value for his or her  
2 capital investment which shall include but not be limited to tools,  
3 equipment, and parts inventory possessed by the dealer on the day he or  
4 she is notified of such cancellation or termination and which are still  
5 within the dealer's possession on the day the cancellation or  
6 termination is effective, if: (i) The capital investment has been  
7 entered into with reasonable and prudent business judgment for the  
8 purpose of fulfilling the franchise; and (ii) the cancellation or  
9 nonrenewal was not done in good faith. Good faith is defined as the  
10 duty of each party to any franchise to act in a fair and equitable  
11 manner towards each other, so as to guarantee one party freedom from  
12 coercion, intimidation, or threats of coercion or intimidation from the  
13 other party: PROVIDED, That recommendation, endorsement, exposition,  
14 persuasion, urging, or argument are not deemed to constitute a lack of  
15 good faith.

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

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

23 (e) Refuse to deliver any vehicle publicly advertised for immediate  
24 delivery to any duly licensed vehicle dealer having a franchise or  
25 contractual agreement for the retail sale of new and unused vehicles  
26 sold or distributed by such manufacturer within sixty days after such  
27 dealer's order has been received in writing unless caused by inability  
28 to deliver because of shortage or curtailment of material, labor,  
29 transportation, or utility services, or by any labor or production  
30 difficulty, or by any cause beyond the reasonable control of the  
31 manufacturer;

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

37 Nothing in this section may be construed to impair the obligations  
38 of a contract or to prevent a manufacturer, distributor,  
39 representative, or any other person, whether or not licensed under this

1 chapter, from requiring performance of a written contract entered into  
2 with any licensee hereunder, nor does the requirement of such  
3 performance constitute a violation of any of the provisions of this  
4 section if any such contract or the terms thereof requiring  
5 performance, have been freely entered into and executed between the  
6 contracting parties. This paragraph and subsection (14)(b) of this  
7 section do not apply to new motor vehicle manufacturers governed by  
8 chapter 46.96 RCW.

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

11 (16) To knowingly and intentionally engage in collusion with a  
12 registered owner of a vehicle to repossess and return or resell the  
13 vehicle to the registered owner in an attempt to avoid a long-term  
14 impound under chapter 46.55 RCW. However, compliance with chapter  
15 62A.9 RCW in repossessing, selling, leasing, or otherwise disposing of  
16 the vehicle, including providing redemption rights to the debtor, is  
17 not a violation of this section.

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