

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1074

Chapter 177, Laws of 2003

58th Legislature
2003 Regular Session

MOTOR VEHICLE IMPOUNDS--COMMERCIAL VEHICLES

EFFECTIVE DATE: 7/27/03

Passed by the House March 3, 2003
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 11, 2003
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved May 9, 2003.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1074** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER

Chief Clerk

FILED

May 9, 2003 - 3:33 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1074

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By House Committee on Transportation (originally sponsored by Representatives Bush, O'Brien, Shabro, Kirby, Armstrong, Mielke, Pearson, Anderson, Campbell, Miloscia, Sullivan and Carrell)

READ FIRST TIME 02/25/03.

1 AN ACT Relating to release of vehicles to vehicle owners in cases
2 involving suspended license vehicle impounds; and amending RCW
3 46.55.113 and 46.55.120.

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

5 **Sec. 1.** RCW 46.55.113 and 1998 c 203 s 4 are each amended to read
6 as follows:

7 (1) Whenever the driver of a vehicle is arrested for a violation of
8 RCW 46.61.502 or 46.61.504 or of RCW 46.20.342 or ~~((46.20.420))~~
9 46.20.345, the vehicle is subject to summary impoundment, pursuant to
10 the terms and conditions of an applicable local ordinance or state
11 agency rule at the direction of a law enforcement officer.

12 (2) In addition, a police officer may take custody of a vehicle, at
13 his or her discretion, and provide for its prompt removal to a place of
14 safety under any of the following circumstances:

15 ~~((1))~~ (a) Whenever a police officer finds a vehicle standing upon
16 the roadway in violation of any of the provisions of RCW 46.61.560, the
17 officer may provide for the removal of the vehicle or require the
18 driver or other person in charge of the vehicle to move the vehicle to
19 a position off the roadway;

1 (~~(2)~~) (b) Whenever a police officer finds a vehicle unattended
2 upon a highway where the vehicle constitutes an obstruction to traffic
3 or jeopardizes public safety;

4 (~~(3)~~) (c) Whenever a police officer finds an unattended vehicle
5 at the scene of an accident or when the driver of a vehicle involved in
6 an accident is physically or mentally incapable of deciding upon steps
7 to be taken to protect his or her property;

8 (~~(4)~~) (d) Whenever the driver of a vehicle is arrested and taken
9 into custody by a police officer;

10 (~~(5)~~) (e) Whenever a police officer discovers a vehicle that the
11 officer determines to be a stolen vehicle;

12 (~~(6)~~) (f) Whenever a vehicle without a special license plate,
13 card, or decal indicating that the vehicle is being used to transport
14 a disabled person under RCW 46.16.381 is parked in a stall or space
15 clearly and conspicuously marked under RCW 46.61.581 which space is
16 provided on private property without charge or on public property;

17 (~~(7)~~) (g) Upon determining that a person is operating a motor
18 vehicle without a valid driver's license in violation of RCW 46.20.005
19 or with a license that has been expired for ninety days or more.

20 (3) When an arrest is made for a violation of RCW 46.20.342, if the
21 vehicle is a commercial vehicle and the driver of the vehicle is not
22 the owner of the vehicle, before the summary impoundment directed under
23 subsection (1) of this section, the police officer shall attempt in a
24 reasonable and timely manner to contact the owner of the vehicle and
25 may release the vehicle to the owner if the owner is reasonably
26 available, as long as the owner was not in the vehicle at the time of
27 the stop and arrest and the owner has not received a prior release
28 under this subsection or RCW 46.55.120(1)(a)(ii).

29 (4) Nothing in this section may derogate from the powers of police
30 officers under the common law. For the purposes of this section, a
31 place of safety may include the business location of a registered tow
32 truck operator.

33 **Sec. 2.** RCW 46.55.120 and 2000 c 193 s 1 are each amended to read
34 as follows:

35 (1) Vehicles or other items of personal property registered or
36 titled with the department that are impounded by registered tow truck

1 operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, or 9A.88.140
2 may be redeemed only under the following circumstances:

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

28 (i) Economic or personal hardship to the spouse of the operator,
29 taking into consideration public safety factors, including the
30 operator's criminal history and driving record; or

31 (ii) The owner of the vehicle was not the driver, the owner did not
32 know that the driver's license was suspended or revoked, and the owner
33 has not received a prior release under this subsection or RCW
34 46.55.113(3).

35 In order to avoid discriminatory application, other than for the
36 reasons for release set forth in (a)(i) and (ii) of this subsection, an
37 agency shall, under a provision of an applicable state agency rule or

1 local ordinance, deny release in all other circumstances without
2 discretion.

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

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

37 (c) Notwithstanding (b) of this subsection, a rental car business

1 may immediately redeem a rental vehicle it owns by payment of the costs
2 of removal, towing, and storage, whereupon the vehicle will not be held
3 for a suspended license impound.

4 (d) Notwithstanding (b) of this subsection, a motor vehicle dealer
5 or lender with a perfected security interest in the vehicle may redeem
6 or lawfully repossess a vehicle immediately by payment of the costs of
7 removal, towing, and storage, whereupon the vehicle will not be held
8 for a suspended license impound. A motor vehicle dealer or lender with
9 a perfected security interest in the vehicle may not knowingly and
10 intentionally engage in collusion with a registered owner to repossess
11 and then return or resell a vehicle to the registered owner in an
12 attempt to avoid a suspended license impound. However, this provision
13 does not preclude a vehicle dealer or a lender with a perfected
14 security interest in the vehicle from repossessing the vehicle and then
15 selling, leasing, or otherwise disposing of it in accordance with
16 chapter ((62A.9)) 62A.9A RCW, including providing redemption rights to
17 the debtor under RCW ((62A.9-506)) 62A.9A-623. If the debtor is the
18 registered owner of the vehicle, the debtor's right to redeem the
19 vehicle under chapter ((62A.9)) 62A.9A RCW is conditioned upon the
20 debtor obtaining and providing proof from the impounding authority or
21 court having jurisdiction that any fines, penalties, and forfeitures
22 owed by the registered owner, as a result of the suspended license
23 impound, have been paid, and proof of the payment must be tendered to
24 the vehicle dealer or lender at the time the debtor tenders all other
25 obligations required to redeem the vehicle. Vehicle dealers or lenders
26 are not liable for damages if they rely in good faith on an order from
27 the impounding agency or a court in releasing a vehicle held under a
28 suspended license impound.

29 (e) The vehicle or other item of personal property registered or
30 titled with the department shall be released upon the presentation to
31 any person having custody of the vehicle of commercially reasonable
32 tender sufficient to cover the costs of towing, storage, or other
33 services rendered during the course of towing, removing, impounding, or
34 storing any such vehicle, with credit being given for the amount of any
35 security deposit paid under (b) of this subsection. In addition, if a
36 vehicle is impounded because the operator was arrested for a violation
37 of RCW 46.20.342 or 46.20.345 and was being operated by the registered
38 owner when it was impounded under local ordinance or agency rule, it

1 must not be released to any person until the registered owner
2 establishes with the agency that ordered the vehicle impounded or the
3 court having jurisdiction that any penalties, fines, or forfeitures
4 owed by him or her have been satisfied. Registered tow truck operators
5 are not liable for damages if they rely in good faith on an order from
6 the impounding agency or a court in releasing a vehicle held under a
7 suspended license impound. Commercially reasonable tender shall
8 include, without limitation, cash, major bank credit cards issued by
9 financial institutions, or personal checks drawn on Washington state
10 branches of financial institutions if accompanied by two pieces of
11 valid identification, one of which may be required by the operator to
12 have a photograph. If the towing firm cannot determine through the
13 customer's bank or a check verification service that the presented
14 check would be paid by the bank or guaranteed by the service, the
15 towing firm may refuse to accept the check. Any person who stops
16 payment on a personal check or credit card, or does not make
17 restitution within ten days from the date a check becomes insufficient
18 due to lack of funds, to a towing firm that has provided a service
19 pursuant to this section or in any other manner defrauds the towing
20 firm in connection with services rendered pursuant to this section
21 shall be liable for damages in the amount of twice the towing and
22 storage fees, plus costs and reasonable attorney's fees.

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

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

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

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

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

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

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

37 (e) If the impoundment is determined to be in violation of this
38 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 46.20.345 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) . . .
37 Signature
38 Typed name and address

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of party mailing notice

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

Passed by the House March 3, 2003.
Passed by the Senate April 11, 2003.
Approved by the Governor May 9, 2003.
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