

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1362

61st Legislature
2009 Regular Session

Passed by the House April 18, 2009
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 9, 2009
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1362** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1362

AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By House Judiciary (originally sponsored by Representatives Goodman, Rodne, Sullivan, Williams, Orwall, O'Brien, Kirby, Chase, and Conway)

READ FIRST TIME 02/13/09.

1 AN ACT Relating to vehicles used in prostitution-related offenses;
2 and amending RCW 9A.88.140, 43.63A.740, and 46.55.120.

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

4 **Sec. 1.** RCW 9A.88.140 and 2007 c 368 s 8 are each amended to read
5 as follows:

6 (1)(a) Upon an arrest for a suspected violation of patronizing a
7 prostitute ~~((e))~~, promoting prostitution in the first degree,
8 promoting prostitution in the second degree, promoting travel for
9 prostitution, commercial sexual abuse of a minor, promoting commercial
10 sexual abuse of a minor, or promoting travel for commercial sexual
11 abuse of a minor, the arresting law enforcement officer may impound the
12 person's vehicle if ~~((a))~~ (i) the motor vehicle was used in the
13 commission of the crime; ~~((b))~~ (ii) the person arrested is the owner
14 of the vehicle or the vehicle is a rental car as defined in RCW
15 46.04.465; and ~~((c))~~ (iii) either (A) the person arrested has
16 previously been convicted of ~~((patronizing a prostitute, under RCW~~
17 ~~9A.88.110, or commercial sexual abuse of a minor, under RCW 9.68A.100))~~
18 one of the offenses listed in this subsection or (B) the offense was
19 committed within an area designated under (b) of this subsection.

1 (b) A local governing authority may designate areas within which
2 vehicles are subject to impoundment under this section regardless of
3 whether the person arrested has previously been convicted of any of the
4 offenses listed in (a) of this subsection.

5 (i) The designation must be based on evidence indicating that the
6 area has a disproportionately higher number of arrests for the offenses
7 listed in (a) of this subsection as compared to other areas within the
8 same jurisdiction.

9 (ii) The local governing authority shall post signs at the
10 boundaries of the designated area to indicate that the area has been
11 designated under this subsection.

12 (2) Impoundments performed under this section shall be in
13 accordance with chapter 46.55 RCW and the impoundment order must
14 clearly state "prostitution hold."

15 (3)(a) Prior to redeeming the impounded vehicle, and in addition to
16 all applicable impoundment, towing, and storage fees paid to the towing
17 company under chapter 46.55 RCW, the owner of the impounded vehicle
18 must pay a fine of five hundred dollars to the impounding agency. The
19 fine shall be deposited in the prostitution prevention and intervention
20 account established under RCW 43.63A.740.

21 (b) Upon receipt of the fine paid under (a) of this subsection, the
22 impounding agency shall issue a written receipt to the owner of the
23 impounded vehicle.

24 (4)(a) In order to redeem a vehicle impounded under this section,
25 the owner must provide the towing company with the written receipt
26 issued under subsection (3)(b) of this section.

27 (b) The written receipt issued under subsection (3)(b) of this
28 section authorizes the towing company to release the impounded vehicle
29 upon payment of all impoundment, towing, and storage fees.

30 (c) A towing company that relies on a forged receipt to release a
31 vehicle impounded under this section is not liable to the impounding
32 authority for any unpaid fine under subsection (3)(a) of this section.

33 (5)(a) In any proceeding under chapter 46.55 RCW to contest the
34 validity of an impoundment under this section where the claimant
35 substantially prevails, the claimant is entitled to a full refund of
36 the impoundment, towing, and storage fees paid under chapter 46.55 RCW
37 and the five hundred dollar fine paid under subsection (3) of this
38 section.

1 (b) If the person is found not guilty at trial for a crime listed
2 under subsection (1) of this section, the person is entitled to a full
3 refund of the impoundment, towing, and storage fees paid under chapter
4 46.55 RCW and the five hundred dollar fine paid under subsection (3) of
5 this section.

6 (c) All refunds made under this section shall be paid by the
7 impounding agency.

8 (d) Prior to receiving any refund under this section, the claimant
9 must provide proof of payment.

10 **Sec. 2.** RCW 43.63A.740 and 1995 c 353 s 11 are each amended to
11 read as follows:

12 The prostitution prevention and intervention account is created in
13 the state treasury. All designated receipts from fees under RCW
14 9.68A.105 and 9A.88.120 and fines collected under RCW 9A.88.140 shall
15 be deposited into the account. Expenditures from the account may be
16 used only for funding the grant program to enhance prostitution
17 prevention and intervention services under RCW 43.63A.720.

18 **Sec. 3.** RCW 46.55.120 and 2004 c 250 s 1 are each amended to read
19 as follows:

20 (1) Vehicles or other items of personal property registered or
21 titled with the department that are impounded by registered tow truck
22 operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, or 9A.88.140
23 may be redeemed only under the following circumstances:

24 (a) Only the legal owner, the registered owner, a person authorized
25 in writing by the registered owner or the vehicle's insurer, a person
26 who is determined and verified by the operator to have the permission
27 of the registered owner of the vehicle or other item of personal
28 property registered or titled with the department, or one who has
29 purchased a vehicle or item of personal property registered or titled
30 with the department from the registered owner who produces proof of
31 ownership or written authorization and signs a receipt therefor, may
32 redeem an impounded vehicle or items of personal property registered or
33 titled with the department. In addition, a vehicle impounded because
34 the operator is in violation of RCW 46.20.342(1)(c) shall not be
35 released until a person eligible to redeem it under this subsection
36 (1)(a) satisfies the requirements of (e) of this subsection, including

1 paying all towing, removal, and storage fees, notwithstanding the fact
2 that the hold was ordered by a government agency. If the department's
3 records show that the operator has been convicted of a violation of RCW
4 46.20.342 or a similar local ordinance within the past five years, the
5 vehicle may be held for up to thirty days at the written direction of
6 the agency ordering the vehicle impounded. A vehicle impounded because
7 the operator is arrested for a violation of RCW 46.20.342 may be
8 released only pursuant to a written order from the agency that ordered
9 the vehicle impounded or from the court having jurisdiction. An agency
10 (~~may~~) shall issue a written order to release pursuant to a provision
11 of an applicable state agency rule or local ordinance authorizing
12 release on the basis of the following:

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

16 (ii) The owner of the vehicle was not the driver, the owner did not
17 know that the driver's license was suspended or revoked, and the owner
18 has not received a prior release under this subsection or RCW
19 46.55.113(3).

20 In order to avoid discriminatory application, other than for the
21 reasons for release set forth in (a)(i) and (ii) of this subsection, an
22 agency shall, under a provision of an applicable state agency rule or
23 local ordinance, deny release in all other circumstances without
24 discretion.

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

1 storage fees, notwithstanding the fact that the hold was ordered by a
2 government agency.

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

22 (c) Notwithstanding (b) of this subsection, a rental car business
23 may immediately redeem a rental vehicle it owns by payment of the costs
24 of removal, towing, and storage, whereupon the vehicle will not be held
25 for a suspended license impound.

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

1 under RCW 62A.9A-623. If the debtor is the registered owner of the
2 vehicle, the debtor's right to redeem the vehicle under chapter 62A.9A
3 RCW is conditioned upon the debtor obtaining and providing proof from
4 the impounding authority or court having jurisdiction that any fines,
5 penalties, and forfeitures owed by the registered owner, as a result of
6 the suspended license impound, have been paid, and proof of the payment
7 must be tendered to the vehicle dealer or lender at the time the debtor
8 tenders all other obligations required to redeem the vehicle. Vehicle
9 dealers or lenders are not liable for damages if they rely in good
10 faith on an order from the impounding agency or a court in releasing a
11 vehicle held under a suspended license impound.

12 (e) The vehicle or other item of personal property registered or
13 titled with the department shall be released upon the presentation to
14 any person having custody of the vehicle of commercially reasonable
15 tender sufficient to cover the costs of towing, storage, or other
16 services rendered during the course of towing, removing, impounding, or
17 storing any such vehicle, with credit being given for the amount of any
18 security deposit paid under (b) of this subsection. In addition, if a
19 vehicle is impounded because the operator was arrested for a violation
20 of RCW 46.20.342 or 46.20.345 and was being operated by the registered
21 owner when it was impounded under local ordinance or agency rule, it
22 must not be released to any person until the registered owner
23 establishes with the agency that ordered the vehicle impounded or the
24 court having jurisdiction that any penalties, fines, or forfeitures
25 owed by him or her have been satisfied. Registered tow truck operators
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. Commercially reasonable tender shall
29 include, without limitation, cash, major bank credit cards issued by
30 financial institutions, or personal checks drawn on Washington state
31 branches of financial institutions if accompanied by two pieces of
32 valid identification, one of which may be required by the operator to
33 have a photograph. If the towing firm cannot determine through the
34 customer's bank or a check verification service that the presented
35 check would be paid by the bank or guaranteed by the service, the
36 towing firm may refuse to accept the check. Any person who stops
37 payment on a personal check or credit card, or does not make
38 restitution within ten days from the date a check becomes insufficient

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

1 vehicle or other item of personal property registered or titled with
2 the department, and the person or agency authorizing the impound in
3 writing of the hearing date and time.

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

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

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

21 (e) If the impoundment is determined to be in violation of this
22 chapter, then the registered and legal owners of the vehicle or other
23 item of personal property registered or titled with the department
24 shall bear no impoundment, towing, or storage fees, and any security
25 shall be returned or discharged as appropriate, and the person or
26 agency who authorized the impoundment shall be liable for any towing,
27 storage, or other impoundment fees permitted under this chapter. The
28 court shall enter judgment in favor of the registered tow truck
29 operator against the person or agency authorizing the impound for the
30 impoundment, towing, and storage fees paid. In addition, the court
31 shall enter judgment in favor of the registered and legal owners of the
32 vehicle, or other item of personal property registered or titled with
33 the department, for the amount of the filing fee required by law for
34 the impound hearing petition as well as reasonable damages for loss of
35 the use of the vehicle during the time the same was impounded against
36 the person or agency authorizing the impound. However, if an
37 impoundment arising from an alleged violation of RCW 46.20.342 or
38 46.20.345 is determined to be in violation of this chapter, then the

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

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

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

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