

# SENATE BILL REPORT

## SHB 1605

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As Passed Senate - Amended, April 7, 2017

**Title:** An act relating to vessel impoundment.

**Brief Description:** Concerning vessel impoundment.

**Sponsors:** House Committee on Public Safety (originally sponsored by Representatives Pettigrew, Hayes and Klippert; by request of Parks and Recreation Commission).

**Brief History:** Passed House: 2/28/17, 97-1.

**Committee Activity:** Law & Justice: 3/09/17, 3/29/17 [DPA].

**Floor Activity:**

Passed Senate - Amended: 4/07/17, 46-1.

### Brief Summary of Bill (As Amended by Senate)

- Allows a law enforcement officer to impound a vessel when the operator is arrested for operating the vessel in a reckless manner or while under the influence of alcohol or drugs.
- Outlines procedures for vessel impoundment, redemption, and forfeiture, and provides liability protection for law enforcement and receiving facilities for actions associated with vessel impoundment.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass as amended.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

**Staff:** Aldo Melchiori (786-7439)

**Background:** Operating a Vessel in a Reckless Manner or Under the Influence. It is unlawful to operate a vessel in a reckless manner, or while under the influence of alcohol or drugs. A person is guilty of operating a vessel while under the influence if the person: (1) operates the vessel while under the influence of or affected by intoxicating liquor, marijuana or any drug, or a combination of such substances; or (2) has, within two hours after operating

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

the vessel, a blood or breath alcohol concentration of 0.08 or higher or a tetrahydrocannabinol (THC) concentration of 5.00 or higher.

A vessel includes every description of watercraft on the water, other than a seaplane, used or capable of being used as a means of transportation on the water. However, it does not include inner tubes, air mattresses, sailboards, and small rafts or flotation devices or toys customarily used by swimmers.

Operating a vessel in a reckless manner is a misdemeanor. Operating a vessel while under the influence of alcohol or drugs is a gross misdemeanor. In addition to the statutory penalties imposed, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense.

Impoundment. When a driver of a motor vehicle is arrested for impaired driving, the arresting officer is required to initiate impoundment procedures.

When a vehicle is impounded, the towing operator must send an impound notice to the legal owner. This notice must be given in writing within 24 hours of impoundment and must inform the owner of the identity of the person or agency authorizing the impound, and the contact information for the towing firm. After being held for 120 consecutive hours, a vehicle is considered abandoned. A report must be filed with the Department of Licensing (DOL), and the owner is provided a notice of custody and sale. If the vehicle remains unclaimed, the vehicle is subject to sale at public auction.

An impounded vehicle may be redeemed by its legal owner any time before the start of the auction upon payment of towing and storage charges. However, a vehicle cannot be redeemed by the driver for at least 12 hours following the time the impounded vehicle arrives at the storage facility if the impoundment is the result of an impaired driving arrest.

No similar process exists for impoundment of vessels following an arrest for operating the vessel in a reckless manner, or while under the influence of alcohol or drugs.

**Summary of Amended Bill:** When the operator of a vessel is arrested for operating the vessel in a reckless manner, or while under the influence of alcohol or drugs, the arresting officer may impound and secure the vessel.

Alternatives to Impoundment. Unless vessel impound is required for evidentiary purposes, an officer must seek reasonable alternatives to impound, including, but not limited to:

- working with the owner to locate a qualified operator who may take possession of the vessel within 30 minutes;
- securing the vessel in a marina, dock, or moorage facility; or
- towing the vessel to the closest boat ramp, marina, or other facility where the owner can meet the officer within 30 minutes to secure or take possession of the vessel.

Impoundment. If a reasonable alternative is not available and the vessel is impounded, the officer may secure the vessel by storing it in a moorage facility that agrees to accept the vessel, or may place the vessel in the custody of a licensed operator to provide commercial towing assistance to a storage facility or other location designated by the vessel operator or

owner. All vessels must be handled appropriately and returned in substantially the condition as they existed before being impounded, with all personal property in the vessel kept intact and returned to the owner during the storing entity's normal business hours.

An impounding officer must notify the legal and registered owners of the impoundment of the vessel. Notice must be in writing and sent within one business day following the impound and may also be served on the operator at the time of impound, if the operator owns the vessel. Notice must be on a vessel impound authorization and inventory form provided by the DOL, and include (1) information regarding the storage facility; (2) notice that the owner has the right to redeem the vessel and to request a hearing to contest the impoundment; and (3) the rate that the owner is being charged for storage of the vessel.

The owner of an impounded vessel is responsible for paying all fees associated with towing and storage. A moorage facility must store the vessel in the least costly appropriate option available, but may charge up to 125 percent of normal moorage rates, and may charge a fee for securing the impounded vessel. An entity providing emergency vessel towing services that accepts a vessel for towing and storage may charge its normal fees. Costs of storage and removal constitute a lien on the vessel until paid.

Officers impounding and securing vessels, and their employing agencies, are not liable for damage to or theft of the vessel or its contents, or for damages for loss of use of the vessel. An entity acting in good faith in towing or storing an impounded vessel, or that in good faith renders assistance to an impending officer, is not liable for resulting damages, absent gross negligence or willful or wanton misconduct.

Redemption. The owner of an impounded and stored vessel may redeem the vessel within 15 days, or until forfeiture, by paying all towing and storage fees. An impounded vessel may not be redeemed by the operator within a 12-hour period starting at the time of the operator's arrest; however, it may be redeemed by or released to an owner other than an operator before 12 hours have elapsed. The moorage facility may request that the impounding officer, or a representative of that officer's agency, is present during redemption.

Any person seeking to redeem an impounded vessel has ten days to request an evidentiary hearing in the district or municipal court of the jurisdiction in which the vessel was impounded to contest the validity of the impoundment. At the conclusion of the hearing, the court must determine whether the impound was proper, whether the charged fees were in compliance with authorized rates, and who is responsible for payment of the fees.

If the impoundment is deemed to be in violation of legal requirements, then the owner of the vessel bears no responsibility for fees; instead, the agency authorizing impoundment is liable. The court must enter judgment in favor of the storage facility for storage fees, and in favor of the petitioner for filing fees. If any judgment is not paid within 15 days, the court must award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment.

The impounding officer and their employer are not liable for damage to or theft of the vessel or its contents, or damages for loss of use of the vessel, if the officer had reasonable suspicion that the operator of the vessel was operating or in physical control of the vessel

while under the influence of alcohol, marijuana, or any drug, was operating the vessel in a reckless manner, or if the officer otherwise acted reasonably under the circumstances.

Forfeiture. If an impounded vessel is not redeemed within 15 days of impoundment, the entity storing the vessel may initiate forfeiture. To initiate forfeiture, the entity storing the vessel must mail notice to the owner and any lienholder of the intent to forfeit. The notice must state, at a minimum: (1) the intent to forfeit; (2) that, upon forfeiture, the owner forfeits all ownership interest; (3) that the entity has the right to possess and dispose of the vessel upon forfeiture; and (4) that the owner may avoid forfeiture by paying all towing and storage fees within 20 days.

Forfeiture is complete 20 days after notice of intent to forfeit is provided, unless the validity of the forfeiture is contested in which case the forfeiture is complete upon the final determination. Any personal property in the vessel not claimed prior to forfeiture must be turned over to the impounding law enforcement agency, and the forfeiting entity must dispose of the vessel through sale.

The proceeds of the sale must be applied first to payment of reasonable charges incurred by the entity for towing, storage, and sale, then to the owner or lienholder. If there is over \$1,000 remaining after the satisfaction of all debt, it is remitted to the DOL for deposit in the Derelict Vessel Removal Account. If the DNR receives a valid claim from the registered vessel owner of record at the time of forfeiture within one year from the date of the sale, the DNR must remit the surplus to the owner. If the sale is for a sum less than the applicable charges, the entity is entitled to assert a claim for the deficiency. Any current law requirement to obtain a vessel inspection prior to transfer must be complied with.

Within 14 days of forfeiture, the forfeiting entity must send to the DOL a forfeited vessel disposition report, along with a copy of the impound authority and inventory form and the notice of intent to forfeit for inclusion in the vessel's ownership records. The forfeited vessel disposition report relieves the previous owner from liability for the vessel and transfers liability to the party to whom the forfeiting entity transfers the vessel.

Pattern Forms. The DOL, in collaboration with the State Parks and Recreation Commission, must create forms for use in the process for impound, redemption, and forfeiture of vessels, including a vessel impound authorization and inventory form, and a forfeited vessel disposition report form.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Substitute House Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: This is a part of an overall campaign to fight operating vessels recklessly or under the influence of alcohol and

drugs. Impoundment and forfeiture are not the preferred way to handle these cases, but for some cases this is the best alternative. The bill is not meant to be punitive.

OTHER: Marina owners want to help deal with this issue. The House amendments to the bill addressed the issues raised at prior hearings.

**Persons Testifying:** PRO: Wade Alonzo, Washington State Parks; Erik Olson, Washington State Fish and Wildlife.

OTHER: Elena Oguiza, Washington Public Ports Association.

**Persons Signed In To Testify But Not Testifying:** No one