
SUBSTITUTE HOUSE BILL 1605

State of Washington

65th Legislature

2017 Regular Session

By House Public Safety (originally sponsored by Representatives Pettigrew, Hayes, and Klippert; by request of Parks and Recreation Commission)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to vessel impoundment; and adding a new section
2 to chapter 79A.60 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 79A.60
5 RCW to read as follows:

6 (1) Whenever the operator of a vessel is arrested for a violation
7 of RCW 79A.60.040, the arresting officer, or another officer acting
8 at the arresting officer's direction, has authority to impound and
9 secure the vessel as provided in this section.

10 (2) This section is not intended to limit or constrain the
11 ability of local government from enacting and enforcing ordinances or
12 other regulations relating to the impoundment of vessels for the
13 purposes of enforcing RCW 79A.60.040.

14 (3) Unless vessel impound is required for evidentiary purposes, a
15 law enforcement officer must seek a series of reasonable alternatives
16 to impound before impounding the vessel. Reasonable alternatives to
17 impound may include, but are not limited to:

18 (a) Working with the vessel's owner to locate a qualified
19 operator who can take possession of the vessel within thirty minutes
20 following the arrest of the vessel's operator and giving possession
21 of the vessel to such a person;

1 (b) Securing the vessel in a marina, dock, or moorage facility,
2 provided that:

3 (i) The owner is present and willing to sign a liability waiver
4 by which the owner agrees to waive any claims related to such an
5 action against the law enforcement officer and the officer's agency
6 and indemnify the officer and the agency against any claims related
7 to such an action by any third party; and

8 (ii) The owner agrees to pay any applicable moorage charges or
9 fees; and

10 (c) Towing the vessel to the closest boat ramp, marina, or
11 similar type facility where the owner can meet the impounding officer
12 within thirty minutes in order to:

13 (i) Secure the vessel by accepting any applicable moorage charges
14 or fees; or

15 (ii) Take possession of the vessel if the owner was not present
16 at the time of the arrest.

17 (4) For the purposes of this section, securing an impounded
18 vessel may include, but is not limited to:

19 (a) Removing the vessel to and storing it at a moorage facility;
20 or

21 (b) Placing the vessel in the custody of an operator licensed by
22 the United States coast guard per 46 C.F.R. Sec. 11.482 to provide
23 commercial assistance towing services in Washington state who must:

24 (i) Tow it to a storage facility operated by the towing entity
25 for storage or to a moorage facility for storage; or

26 (ii) Tow it to a location designated by the operator or owner of
27 the vessel.

28 (5) In exigent circumstances, an impounding officer may
29 temporarily attach an impounded vessel to a mooring buoy or anchor
30 the vessel to the bottom for up to twenty-four hours, after which
31 time the impounding officer must move or cause the vessel to be moved
32 to an appropriate facility for storage as outlined in subsection (4)
33 of this section.

34 (6) If the impounding officer secures a vessel by placing it on
35 its trailer, the officer, moorage facility representative, or
36 commercial assistance towing service is authorized to detach the
37 vessel's trailer from the vehicle to which it is attached, attach the
38 trailer to an impounding vehicle, operate the vessel to load it on
39 the trailer, and then tow the vessel on its trailer to the storage
40 facility.

1 (7) All vessels must be handled appropriately and returned in
2 substantially the same condition as they existed before being
3 impounded, unless forfeited pursuant to subsection (12) of this
4 section. Except as provided in subsection (12)(b) of this section,
5 all personal property in the vessel must be kept intact and must be
6 returned to the vessel's owner or agent during the normal business
7 hours of the entity storing the vessel upon request, provided the
8 vessel owner, or the owner's agent, is able to provide sufficient
9 proof of his or her identity.

10 (8) No moorage facility or vessel towing service provider is
11 required to accept an impounded vessel for towing or storage. An
12 impounding officer intending to secure a vessel by means of storing
13 it at a moorage facility must have the permission of the owner or
14 operator of the moorage facility prior to leaving the vessel at the
15 facility. The impounding officer shall identify an authorized person
16 on the vessel impound authorization and inventory form to represent
17 the vessel impound facility. The officer must provide a copy of the
18 vessel impound authorization and inventory form to the designated
19 person representing the vessel impound facility along with the
20 addresses of the registered and legal owners of the vessel.

21 (9)(a) An impounding officer impounding a vessel pursuant to this
22 section shall notify the legal and registered owner or owners of the
23 impoundment of the vessel. The notification must be in writing and
24 sent within one business day after the impound by first-class mail,
25 digital transmission, or facsimile to the last known address of the
26 registered and legal owner or owners of the vessel, as identified by
27 the department of licensing, and must inform the owner or owners of
28 the identity of the person or agency authorizing the impound. The
29 impounding officer may serve the operator with the vessel impound
30 authorization and inventory form at the time of impound if the
31 operator is a legal or registered owner of the vessel. Personal
32 service of the vessel impound authorization and inventory form meets
33 the notice requirement of this subsection with respect to the legal
34 or registered owner personally served. The notification must be
35 provided on a vessel impound authorization and inventory form and
36 include: (i) The name, address, and telephone number of the facility
37 where the vessel is being held; (ii) the right of redemption and
38 opportunity for a hearing to contest the validity of the impoundment;
39 and (iii) the rate that is being charged for the storage of the
40 vessel while impounded.

1 (b) A notice does not need to be sent to the legal or registered
2 owner or owners of an impounded vessel if the vessel has been
3 redeemed.

4 (c) The impounded vessel may not be redeemed by the operator
5 within a twelve-hour period starting at the time of the operator's
6 arrest. The vessel may be redeemed by or released to an owner or an
7 agent of the owner that is not the operator within the twelve-hour
8 period following arrest.

9 (10) A moorage facility that accepts a vessel impounded pursuant
10 to this section for storage may charge the owner of the vessel up to
11 one hundred twenty-five percent of the normal moorage rates of
12 tenants or guests in addition to a fee for securing the impounded
13 vessel. A moorage facility must store the vessel in the least costly
14 boat slip or storage area available that is appropriate for the
15 vessel size. An entity that provides emergency vessel towing services
16 that accepts a vessel impounded pursuant to this section for towing
17 or storage, or both, may charge its normal towing and storage fees.
18 The costs of removal and storage of vessels under this section is a
19 lien upon the vessel until paid, unless the impoundment is determined
20 to be invalid. The registered owner of a vessel impounded pursuant to
21 this section is responsible for paying all fees associated with the
22 towing and storage of the vessel resulting from its impoundment,
23 except as otherwise provided in subsection (15) of this section.

24 (11) Within fifteen days of impoundment of the vessel, or until
25 the vessel is forfeited pursuant to subsection (12) of this section,
26 the legal or registered owner of a vessel impounded and stored
27 pursuant to this section may redeem the vessel by paying all towing
28 and storage fees charged as allowed in subsection (10) of this
29 section. Within fifteen days of impoundment of the vessel, or until
30 the vessel is forfeited pursuant to subsection (12) of this section,
31 any person who shows proof of ownership or written authorization from
32 the impounded vessel's registered or legal owner or the vessel's
33 insurer may view the vessel without charge during the normal business
34 hours of the entity storing the vessel. The moorage facility may
35 request that the impounding officer or a representative of the agency
36 that employs the impounding officer be present during redemption.

37 (12) If an impounded vessel stored pursuant to this section is
38 not redeemed by its registered or legal owner pursuant to subsection
39 (11) of this section within fifteen days of its impoundment, the
40 entity storing the vessel may initiate forfeiture of the vessel.

1 Forfeiture is complete twenty days after mailing of the notice
2 required by this subsection, unless within that time the owner, or
3 any lienholder or holder of a security interest, pays all fees
4 associated with the towing and storage of the vessel resulting from
5 its impoundment.

6 (a) In order to forfeit the vessel, the entity storing the vessel
7 must mail notice of its intent to forfeit the vessel. Such a notice
8 must, at a minimum, state: (i) The intent of the entity to forfeit
9 the vessel; (ii) that, upon forfeiture, the owner forfeits all
10 ownership interest in the vessel; (iii) the right of the entity to
11 take possession of or dispose of the vessel upon forfeiture; and (iv)
12 that the owner, or other interested person or entity, may avoid
13 forfeiture of the vessel by paying all fees associated with the
14 towing and storage of the vessel resulting from its impoundment
15 within twenty days of mailing of the notice. Notice must be mailed to
16 the owner of the vessel at the address on file with the state with
17 which the vessel is registered, or on file with the federal
18 government, if the vessel is registered with the federal government,
19 and any lienholder or secured interests on record. A notice need not
20 be sent to the purported owner or any other person whose interest in
21 the vessel is not recorded with a state or with the federal
22 government.

23 (b) Upon forfeiture, the registered and legal owners of the
24 vessel forfeit any and all ownership interest in it and the entity
25 storing the vessel must dispose of it through sale. The proceeds of a
26 sale under this section shall be applied first to payment of the
27 amount of reasonable charges incurred by the entity for towing,
28 storage, and sale, then to the owner or to satisfy any liens of
29 record or security interests of record on the vessel in the order of
30 their priority. If the sale is for a sum less than the applicable
31 charges, the entity is entitled to assert a claim for the deficiency
32 against the vessel owner. Nothing in this section prevents any lien
33 holder or secured party from asserting a claim for any deficiency
34 owed the lien holder or secured party. If any moneys remain after the
35 satisfaction of amounts owed to the entity and to any owner or bona
36 fide security interest, then the entity must remit the moneys to the
37 department of natural resources for deposit in the derelict vessel
38 removal account established in RCW 79.100.100. A report identifying
39 the vessel resulting in any surplus shall accompany the remitted
40 funds. If the department of natural resources subsequently receives a

1 valid claim from the registered vessel owner of record at the time of
2 forfeiture within one year from the date of the sale, the surplus
3 moneys shall be remitted to such owner. Transfer of ownership of the
4 vessel after forfeiture must comply with RCW 79.100.150, when
5 applicable. All personal property in the vessel not claimed prior to
6 forfeiture must be turned over to the law enforcement agency that
7 authorized the impoundment. The personal property must be disposed of
8 pursuant to chapter 63.32 or 63.40 RCW, or as otherwise provided by
9 law. Within fourteen days of the forfeiture of a vessel pursuant to
10 this subsection, the forfeiting entity shall send a forfeited vessel
11 disposition report, together with a copy of the vessel impound
12 authorization and inventory form and the notice of intent to forfeit,
13 to the department of licensing so that the department may include
14 documentation in the ownership records of the vessel. The vessel
15 disposition information sent to the department of licensing on the
16 forfeited vessel disposition report relieves the previous owner of
17 the vessel from any civil or criminal liability for the operation of
18 the vessel from the date of sale thereafter, and transfers full
19 liability for the vessel to the party to whom the vessel is
20 transferred by the forfeiting entity.

21 (13) An entity that accepts an impounded vessel from an
22 impounding officer pursuant to this section who, in good faith, acts
23 to provide towing or storage of the vessel is not liable for civil
24 damages resulting from any act or omission in the performance of
25 trailering, towing, or storage other than acts or omissions
26 constituting gross negligence or willful or wanton misconduct. Any
27 individual or entity whose assistance has been requested by an
28 impounding officer who in good faith renders assistance in
29 trailering, towing, or storing of a vessel impounded pursuant to this
30 section is not liable for civil damages resulting from any act or
31 omission in providing assistance other than for acts or omissions
32 constituting gross negligence or willful or wanton misconduct.

33 (14) If a law enforcement officer impounds and secures a vessel
34 pursuant to this section, the impounding officer and the government
35 agency employing the officer are not liable for any damage to or
36 theft of the vessel or its contents, or for damages for loss of use
37 of the vessel.

38 (15) Any legal or registered owner seeking to redeem an impounded
39 vessel under this section has a right to a hearing in the district or
40 municipal court for the jurisdiction in which the vessel was

1 impounded to contest the validity of the impoundment. The district
2 court has jurisdiction to determine the issues involving all
3 impoundments including those authorized by the state or its agents,
4 unless the impoundment was authorized by municipal agents. The
5 municipal court has exclusive jurisdiction to determine the issues
6 involving impoundments authorized by agents of the municipality. Any
7 request for a hearing must be made in writing per the instructions
8 provided on the uniform vessel impound authorization and inventory
9 form and must be received by the appropriate court within ten
10 business days of the date that the vessel impound authorization and
11 inventory form was mailed to or served on the registered or legal
12 owner or owners of the impounded vessel. If the hearing request is
13 not received by the court within ten business days of the sending or
14 personal service of the notice of impoundment pursuant to subsection
15 (9) of this section, the right to a hearing is waived and the
16 registered owner is liable for any towing, storage, or other
17 impoundment charges permitted under this chapter. Upon receipt of a
18 timely hearing request, the court shall proceed to hear and determine
19 the validity of the impoundment.

20 (a) Within five days after the request for a hearing, the court
21 shall notify the operator of the impound facility, the registered and
22 legal owners of the vessel, and the officer or agency authorizing the
23 impound in writing of the hearing date and time.

24 (b) At the hearing, the petitioner may produce any relevant
25 evidence that is admissible under court rules to show that the
26 impoundment, towing, or storage fees charged were not proper. The
27 court may consider a written report made under oath by the officer
28 who authorized the impoundment in lieu of the officer's personal
29 appearance at the hearing.

30 (c) At the conclusion of the hearing, the court shall determine
31 whether the impoundment was proper, whether the towing or storage
32 fees charged were in compliance with the fees established in
33 subsection (10) of this section, and who is responsible for payment
34 of the fees. The court may not adjust fees or charges that are in
35 compliance with subsection (10) of this section.

36 (d) If the impoundment is found proper, the impoundment, towing,
37 and storage fees as permitted under this chapter together with court
38 costs must be assessed against the petitioner.

39 (e) If the impoundment is determined to be in violation of this
40 section, then the registered and legal owners of the vessel bear no

1 impoundment, towing, or storage fees, any security must be returned
2 or discharged as appropriate, and the agency that authorized the
3 impoundment is liable for any towing, storage, or other impoundment
4 fees permitted under this chapter. The court shall enter judgment in
5 favor of the moorage facility or vessel towing contractor against the
6 agency authorizing the impound for the impoundment, towing, and
7 storage fees incurred. In addition, the court shall enter judgment in
8 favor of the petitioner for the amount of the filing fee required by
9 law for the impound hearing petition. If an impoundment is determined
10 to be in violation of this section, the impounding officer and the
11 government agency employing the officer are not liable for damage to
12 or theft of the vessel or its contents, or damages for loss of use of
13 the vessel, if the impounding officer had reasonable suspicion to
14 believe that the operator of the vessel was operating the vessel
15 while under the influence of intoxicating liquor or any drug, was in
16 physical control of the vessel while under the influence of
17 intoxicating liquor or any drug, or was operating the vessel in a
18 reckless manner, or if the impounding officer otherwise acted
19 reasonably under the circumstances in acting to impound and secure
20 the vessel.

21 (f) If any judgment entered under this subsection is not paid
22 within fifteen days of notice in writing of its entry, the court
23 shall award reasonable attorneys' fees and costs against the
24 defendant in any action to enforce the judgment. Notice of entry of
25 judgment may be made by registered or certified mail, and proof of
26 mailing may be made by affidavit of the party mailing the notice.
27 Notice of the entry of the judgment must read essentially as follows:

28 TO:

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

36 DATED this day of, (year)....

37 Signature

38 Typed name and address of party mailing notice

1 (16) By September 30, 2017, the department of licensing in
2 collaboration with the commission shall create the following forms
3 for use in the enforcement of this section:

4 (a) A vessel impound authorization and inventory form. This form
5 must include sections for the impounding officer to record the
6 addresses of the registered and legal owners of the vessel and the
7 designated individual that will act on behalf of the impound
8 facility; and

9 (b) A forfeited vessel disposition report form.

10 (17) The definitions in this subsection apply throughout this
11 section unless the context clearly requires otherwise.

12 (a) "Impound" means to take and hold a vessel in legal custody.

13 (b) "Legal owner" means a person having a perfected security
14 interest or a registered owner of a vessel unencumbered by a security
15 interest.

16 (c) "Moorage facility" includes a private moorage facility as
17 defined in RCW 88.26.010, a moorage facility as defined in RCW
18 53.08.310, or a moorage facility owned or operated by the agency of
19 the arresting officer.

20 (d) "Registered owner" or "owner" means the person whose lawful
21 right of possession of a vessel has most recently been recorded with
22 the department of licensing.

23 (e) "Vessel" includes any vessel as defined in RCW 79A.60.010 and
24 includes any associated trailer or towing device used to transport
25 the vessel if it is included in the impoundment.

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