
SENATE BILL 5780

State of Washington 61st Legislature 2009 Regular Session

By Senators Tom and Brandland; by request of Washington State Patrol

Read first time 02/02/09. Referred to Committee on Transportation.

1 AN ACT Relating to establishing chapter 46.55 RCW as the exclusive
2 remedy for any claims resulting from the impoundment of a motor
3 vehicle; amending RCW 46.55.120; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that state and local
6 law enforcement agencies must often impound motor vehicles in order to
7 further public safety. The legislature has always provided a remedy
8 for impoundment that can promptly restore vehicles to their owners,
9 provide damages for the loss of use of a vehicle in the event an
10 impoundment violates this chapter, and provide for a speedy judicial
11 adjudication of a challenge to the impoundment so that an owner can
12 recover a vehicle. It is therefore, the intent of the legislature to
13 clarify that the procedures and remedies contained in RCW 46.55.120 are
14 intended to be the exclusive remedy for any claim based on impoundment
15 at the direction of a law enforcement officer or governmental agency,
16 and any civil cause of action for damages based on impoundment at the
17 direction of a law enforcement officer or governmental agency is
18 abolished.

1 **Sec. 2.** RCW 46.55.120 and 2004 c 250 s 1 are each amended to read
2 as follows:

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

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

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

35 (ii) The owner of the vehicle was not the driver, the owner did not
36 know that the driver's license was suspended or revoked, and the owner
37 has not received a prior release under this subsection or RCW
38 46.55.113(3).

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

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

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

1 auction, and the tow truck operator shall sell the vehicle to the
2 highest bidder who is not the registered owner.

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

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

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

1 of RCW 46.20.342 or 46.20.345 and was being operated by the registered
2 owner when it was impounded under local ordinance or agency rule, it
3 must not be released to any person until the registered owner
4 establishes with the agency that ordered the vehicle impounded or the
5 court having jurisdiction that any penalties, fines, or forfeitures
6 owed by him or her have been satisfied. Registered tow truck operators
7 are not liable for damages if they rely in good faith on an order from
8 the impounding agency or a court in releasing a vehicle held under a
9 suspended license impound. Commercially reasonable tender shall
10 include, without limitation, cash, major bank credit cards issued by
11 financial institutions, or personal checks drawn on Washington state
12 branches of financial institutions if accompanied by two pieces of
13 valid identification, one of which may be required by the operator to
14 have a photograph. If the towing firm cannot determine through the
15 customer's bank or a check verification service that the presented
16 check would be paid by the bank or guaranteed by the service, the
17 towing firm may refuse to accept the check. Any person who stops
18 payment on a personal check or credit card, or does not make
19 restitution within ten days from the date a check becomes insufficient
20 due to lack of funds, to a towing firm that has provided a service
21 pursuant to this section or in any other manner defrauds the towing
22 firm in connection with services rendered pursuant to this section
23 shall be liable for damages in the amount of twice the towing and
24 storage fees, plus costs and reasonable 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

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

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

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

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

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

1 (e) If the impoundment is determined to be in violation of this
2 chapter, then the registered and legal owners of the vehicle or other
3 item of personal property registered or titled with the department
4 shall bear no impoundment, towing, or storage fees, and any security
5 shall be returned or discharged as appropriate, and the person or
6 agency who authorized the impoundment shall be liable for any towing,
7 storage, or other impoundment fees permitted under this chapter. The
8 court shall enter judgment in favor of the registered tow truck
9 operator against the person or agency authorizing the impound for the
10 impoundment, towing, and storage fees paid. In addition, the court
11 shall enter judgment in favor of the registered and legal owners of the
12 vehicle, or other item of personal property registered or titled with
13 the department, for the amount of the filing fee required by law for
14 the impound hearing petition as well as reasonable damages for loss of
15 the use of the vehicle during the time the same was impounded against
16 the person or agency authorizing the impound. However, if an
17 impoundment arising from an alleged violation of RCW 46.20.342 or
18 46.20.345 is determined to be in violation of this chapter, then the
19 law enforcement officer directing the impoundment and the government
20 employing the officer are not liable for damages if the officer relied
21 in good faith and without gross negligence on the records of the
22 department in ascertaining that the operator of the vehicle had a
23 suspended or revoked driver's license. If any judgment entered is not
24 paid within fifteen days of notice in writing of its entry, the court
25 shall award reasonable attorneys' fees and costs against the defendant
26 in any action to enforce the judgment. Notice of entry of judgment may
27 be made by registered or certified mail, and proof of mailing may be
28 made by affidavit of the party mailing the notice. Notice of the entry
29 of the judgment shall read essentially as follows:

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

1 Typed name and address
2 of party mailing notice

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

11 (5) The procedures and remedies provided in this section are the
12 exclusive remedy for any claim based on impoundment at the direction of
13 a law enforcement officer or governmental agency, and any civil cause
14 of action for damages based on impoundment at the direction of a law
15 enforcement officer or governmental agency is abolished.

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