

SENATE BILL 55

Introduced by Towe

12/23	Introduced
12/23	Referred to Highways & Transportation
1/04	First Reading
1/04	Fiscal Note Requested
1/05	Rereferred to Judiciary
1/11	Fiscal Note Received
1/12	Fiscal Note Printed
1/19	Hearing
1/28	Tabled in Committee

## SENATE BILL NO. 55

INTRODUCED BY TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING FORFEITURE OF A MOTOR VEHICLE UPON THE REGISTERED OWNER'S THIRD OR SUBSEQUENT CONVICTION FOR ALLOWING OPERATION OF A MOTOR VEHICLE WITHOUT PROOF OF FINANCIAL RESPONSIBILITY; ALLOWING SEIZURE OF A MOTOR VEHICLE AFTER A SECOND CONVICTION; AND AMENDING SECTION 61-6-304, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 61-6-304, MCA, is amended to read:

"61-6-304. Penalties illegal operation of motor vehicle -- penalties. (1) It is unlawful for any--person the registered owner of a vehicle to operate allow a the motor vehicle to be operated upon ways of this state open to the public without a valid policy of liability insurance in effect in an amount not less than that provided in 61-6-301 or unless such the person has been issued a certificate of self-insurance pursuant to 61-6-143, or has previously posted an indemnity bond with the department as provided by 61-6-301, or is operating a vehicle exempt under 61-6-303.

(2) A violation of 61-6-301 through 61-6-304 is a misdemeanor punishable;

(a) by a fine of not less than \$250 and not to exceed

\$500 or by imprisonment in the county jail for not more than 10 days, or both; and

(b) as provided in subsection (3).

(3) In addition to the penalty provided in subsection (2)(a), the following penalties apply:

(a) Upon a second or subsequent conviction for violation of subsection (1), the convicted person is subject to seizure of the motor vehicle used in violation of subsection (1), as provided in [sections 2 and 3].

(b) Upon a third or subsequent conviction for violation of subsection (1), the sentencing judge shall order forfeiture to the city, county, or state, depending on the impounding officer's employing agency, of the vehicle that was allowed to be operated by the convicted person at the time of the offense that resulted in the third or subsequent conviction. There is a rebuttable presumption of forfeiture as to a motor vehicle described in this section, except motor vehicles exempted by [section 2(2)].

(4) Before ordering forfeiture of a vehicle under the provisions of subsection (3), a sentencing judge shall find that:

(a) the convicted person is the registered owner of the motor vehicle to be forfeited;

(b) the vehicle was allowed to be used in violation of subsection (1);

(c) the vehicle is subject to forfeiture under [section 2]; and

(d) the convicted person has at least two prior convictions for violations of subsection (1).

(5) (a) For the purpose of determining the number of convictions under this section, "conviction" means:

(i) a conviction, as defined in 45-2-101, in this state;

(ii) a conviction for a violation of a similar statute in another state; or

(iii) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state for a violation of a similar statute, which forfeiture has not been vacated.

(b) An offender is considered to have been previously convicted for purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown."

NEW SECTION. Section 2. Second or subsequent violation

of mandatory insurance requirements -- seizure -- forfeiture -- exemptions -- preservation of security interests. (1) A motor vehicle allowed to be operated in violation of 61-6-304(1) is subject to seizure after the registered owner has been twice convicted for violation of 61-6-304(1) and to forfeiture upon the third or subsequent conviction of the registered owner for a violation of 61-6-304(1).

(2) (a) A motor vehicle is not subject to forfeiture under this section because of any act or omission established by the owner of the motor vehicle to have been committed or omitted without the owner's knowledge or consent.

(b) A motor vehicle is not subject to forfeiture under this section if the vehicle is owned by a nonresident, it is currently registered in the owner's resident jurisdiction, and the owner is in compliance with the motor vehicle liability insurance requirements, if any, of that jurisdiction.

(3) A forfeiture of a motor vehicle encumbered by a security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to any violation of 61-6-304(1).

NEW SECTION. Section 3. Seizure of motor vehicle -- notice -- release. (1) A peace officer who has probable cause to believe that a motor vehicle is being operated in

1 violation of the requirements of 61-6-304(1) and that the  
2 registered owner of the vehicle has two or more prior  
3 convictions of a violation of 61-6-304(1) may impound the  
4 motor vehicle. The impounding officer shall arrange to have  
5 the vehicle towed to a storage facility to be held until  
6 forfeiture is declared or release ordered. The vehicle owner  
7 is subject to towing and storage fees.

8 (2) Within 5 days of seizure of a vehicle under this  
9 section, the impounding officer's employing agency shall  
10 notify the registered owner and any holder of a perfected  
11 security interest in the seized vehicle of the seizure, of  
12 the possibility of forfeiture, and of the person's right to  
13 present evidence to the agency as to why the vehicle should  
14 be released by the agency.

15 (3) The notice must contain the following:

16 (a) a description of the vehicle, including the year  
17 built and vehicle identification number;

18 (b) the name of the registered owner;

19 (c) the date and nature of the violation that is the  
20 basis of forfeiture;

21 (d) the telephone number and address where additional  
22 information may be obtained;

23 (e) a statement that the vehicle is subject to  
24 forfeiture; and

25 (f) a statement that the vehicle may be released by the

1 agency if, within 15 days of the seizure:

2 (i) the agency is provided with proof that, at the time  
3 of the seizure, there was a valid policy of liability  
4 insurance in effect in an amount not less than that provided  
5 in 61-6-301 or the operator had been issued a certificate of  
6 self-insurance pursuant to 61-6-143, had previously posted  
7 an indemnity bond with the department as provided by  
8 61-6-301, or was operating a vehicle exempt under 61-6-303;

9 (ii) the owner of the motor vehicle establishes to the  
10 satisfaction of the agency that the act or omission for  
11 which the motor vehicle was seized was committed or omitted  
12 without the owner's knowledge or consent;

13 (iii) the owner of the motor vehicle establishes to the  
14 satisfaction of the agency that the owner is a nonresident,  
15 that the motor vehicle is currently registered in the  
16 owner's resident jurisdiction, and that the owner is in  
17 compliance with the motor vehicle liability insurance  
18 requirements, if any, of that jurisdiction; or

19 (iv) the owner of the motor vehicle establishes to the  
20 satisfaction of the agency that the owner does not have two  
21 or more prior convictions of a violation of 61-6-304(1).

22 (4) The agency shall release the vehicle to the owner:

23 (a) upon proof that the conditions of subsection (3)(f)  
24 have been met; or

25 (b) if the act for which the owner was charged with a

third or subsequent violation of 61-6-304(1) does not result in a conviction or forfeiture of bond.

**NEW SECTION. Section 4. Forfeiture of motor vehicle -- notice -- sale -- relief.** (1) If a forfeiture is ordered by the sentencing court under 61-6-304, the employing agency of the impounding officer shall conduct a search to determine the existence of any person holding a security interest in the vehicle. If a secured party is found, the agency shall serve notice of the court forfeiture order on the secured party by certified mail. Not less than 10 days after the mailing of the notice, the agency shall sell the vehicle in a commercially reasonable manner.

(2) A person receiving a notice under subsection (1) may petition the sentencing court for relief, including receipt of the vehicle, based upon the exemptions provided under [section 2].

**NEW SECTION. Section 5. Forfeiture of vehicle -- disposition of proceeds of sale.** (1) Whenever a motor vehicle is forfeited and sold under the provisions of 61-6-304, the net proceeds of the sale must be distributed as follows:

(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the motor vehicle;

(b) except as provided in subsection (1)(e), the

remainder, if any, to the county treasurer of the county in which the motor vehicle was seized, who shall establish and maintain a motor vehicle forfeiture account and deposit the remainder into the account;

(c) except as provided in subsection (1)(e), if the motor vehicle was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer, who shall establish and maintain a motor vehicle forfeiture account and deposit the remainder into the account;

(d) except as provided in subsection (1)(e), if the motor vehicle was seized by an employee of the state, the remainder, if any, to an account in the state special revenue fund to the credit of the department of justice; and

(e) if the motor vehicle was seized as a result of the efforts of more than one law enforcement agency, the remainder, if any, to the accounts required by this subsection (1), pro rata in the proportions represented by the agencies' expenses of investigation.

(2) The money received under subsection (1) must in each fiscal year be appropriated to and may be expended by each receiving agency for purposes of law enforcement.

**NEW SECTION. Section 6. Codification instruction.** [Sections 2 through 5] are intended to be codified as an integral part of Title 61, chapter 6, part 3, and the

1 provisions of Title 61, chapter 6, part 3, apply to  
2 [sections 2 through 5].

3 NEW SECTION. **Section 7. Severability.** If a part of  
4 [this act] is invalid, all valid parts that are severable  
5 from the invalid part remain in effect. If a part of [this  
6 act] is invalid in one or more of its applications, the part  
7 remains in effect in all valid applications that are  
8 severable from the invalid applications.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0055, as introduced.

**DESCRIPTION OF PROPOSED LEGISLATION:** An act requiring forfeiture of a motor vehicle upon the registered owner's third or subsequent conviction for allowing operation of a motor vehicle without proof of financial responsibility.

**ASSUMPTIONS:**

1. Assume that judges would not exercise their option of seizure on the second offense, only third and subsequent offenses would utilize forfeiture of the vehicle.
2. There were 250 third offense convictions for violation of the "proof of insurance" law during FY92. It is assumed that the same number will occur during each year of the 1995 biennium. Thus 250 vehicles are estimated to be forfeited and sold by the Highway Patrol Division of the Department of Justice during FY94 and FY95.
3. The average net sale price of a forfeited vehicle will be \$750. Items such as liens, towing, cost of sale and storage costs have been deducted from the sale price. The gross sale price is relatively low taking into account that the average person driving without insurance is driving a "junker".
4. To maintain control and sale of the 250 vehicles seized per year would require a new 1.00 FTE, grade 12, along with supplies and equipment costs, amounting to \$30,000 each year.
5. A new state special revenue account will be established to account for transactions involving forfeiture and sale under these provisions.

**FISCAL IMPACT:**

**Expenditures:** Department of Justice: Highway Patrol Division

	FY94			FY95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	260.65	261.65	1.00	253.15	254.15	1.00
Personal Services	9,466,084	9,493,084	27,000	9,374,531	9,401,531	27,000
Operating Costs	2,391,327	2,392,327	1,000	2,446,871	2,449,871	3,000
Equipment	1,258,912	1,260,912	2,000	1,297,942	1,297,942	0
Total	13,116,323	13,146,323	30,000	13,119,344	13,149,344	30,000
<b>Funding:</b>						
State Special (02)	0	30,000	30,000	0	30,000	30,000
Highways Special Revenue	12,512,829	12,512,829	0	12,508,343	12,508,343	0
Federal Special	603,494	603,494	0	611,001	611,001	0
Total	13,116,323	13,146,323	30,000	13,119,344	13,149,344	30,000

**Revenues:**

State Special Revenue (02)	0	187,500	187,500	0	187,500	187,500
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**Net Impact:**

Net increase in State Special Rev			157,500			157,500
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**EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:** Local governments would also have the same process, but statistics are not readily available for an estimate.

*Dave Lewis* 1-11-93  
 DAVE LEWIS, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

*Thomas E. Towe* 1/12/93  
 TOM TOWE, PRIMARY SPONSOR DATE  
 Fiscal Note for SB0055, as introduced

**SB 55**