
HOUSE BILL 1724

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By Representatives Rasmussen, Moyer, Riley, Brumsickle, Ferguson, Jacobsen, Orr, Rayburn, Sheldon, Morris, Silver, Zellinsky, Heavey, Roland, Brough, Broback, Paris, Ludwig, Kremen and Nealey.

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1 AN ACT Relating to driving while under the influence of liquor or
2 drugs; and amending RCW 46.20.308, 46.61.506, 46.61.508, and 46.61.517.

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

4 **Sec. 1.** RCW 46.20.308 and 1989 c 337 s 8 are each amended to read
5 as follows:

6 (1) Any person who operates a motor vehicle within this state is
7 deemed to have given consent, subject to the provisions of RCW
8 46.61.506, to a test or tests of his or her breath ~~((or))~~, blood, or
9 urine for the purpose of determining the ~~((alcoholic content of))~~
10 alcohol concentration or the presence of other drugs in his or her
11 breath ((or)), blood, or urine if arrested for any offense where, at
12 the time of the arrest, the arresting officer has reasonable grounds to
13 believe the person had been driving or was in actual physical control
14 of a motor vehicle while under the influence of intoxicating liquor or
15 drugs.

1 (2) The test or tests of breath shall be administered at the
2 direction of a law enforcement officer having reasonable grounds to
3 believe the person to have been driving or in actual physical control
4 of a motor vehicle within this state while under the influence of
5 intoxicating liquor. However, in those instances where: (a) The
6 person is incapable due to physical injury, physical incapacity, or
7 other physical limitation, of providing a breath sample; or (b) as a
8 result of a traffic accident the person is being treated for a medical
9 condition in a hospital, clinic, doctor's office, or other similar
10 facility in which a breath testing instrument is not present, a blood
11 test shall be administered by a qualified person as provided in RCW
12 46.61.506(4). The officer shall inform the person of his or her right
13 to refuse the breath ~~((or))~~, blood, or urine test, and of his or her
14 right to have additional tests administered by any qualified person of
15 his or her choosing as provided in RCW 46.61.506. The officer shall
16 warn the driver that ~~((+a))~~ his or her privilege to drive will be
17 revoked or denied if he or she refuses to submit to the test, and
18 ~~((+b))~~ that his or her refusal to take the test may be used in a
19 criminal trial. When the officer has reasonable grounds to believe the
20 person is under the influence of drugs, the test shall be of the blood
21 or urine and shall be administered according to the provisions of RCW
22 46.61.506(4).

23 (3) Except as provided in this section, the test administered shall
24 be of the breath only. If an individual is unconscious or is under
25 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
26 or vehicular assault as provided in RCW 46.61.522, or if an individual
27 is under arrest for the crime of driving while under the influence of
28 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
29 results from an accident in which another person has been injured and
30 there is a reasonable likelihood that such other person may die as a

1 result of injuries sustained in the accident, a breath ((~~or~~)), blood,
2 or urine test may be administered without the consent of the individual
3 so arrested.

4 (4) Any person who is dead, unconscious, or who is otherwise in a
5 condition rendering him or her incapable of refusal, shall be deemed
6 not to have withdrawn the consent provided by subsection (1) of this
7 section and the test or tests may be administered, subject to the
8 provisions of RCW 46.61.506, and the person shall be deemed to have
9 received the warnings required under subsection (2) of this section.

10 (5) If, following his or her arrest and receipt of warnings under
11 subsection (2) of this section, the person arrested refuses upon the
12 request of a law enforcement officer to submit to a test or tests of
13 his or her breath ((~~or~~)), blood, or urine, no test shall be given
14 except as authorized under subsection (3) or (4) of this section.

15 (6) The department of licensing, upon the receipt of a sworn report
16 of the law enforcement officer that the officer had reasonable grounds
17 to believe the arrested person had been driving or was in actual
18 physical control of a motor vehicle within this state while under the
19 influence of intoxicating liquor or any drug and that the person had
20 refused to submit to the test or tests upon the request of the law
21 enforcement officer after being informed that refusal would result in
22 the revocation of the person's privilege to drive, shall revoke the
23 person's license or permit to drive or any nonresident operating
24 privilege.

25 (7) Upon revoking the license or permit to drive or the nonresident
26 operating privilege of any person, the department shall immediately
27 notify the person involved in writing by personal service or by
28 certified mail of its decision and the grounds therefor, and of the
29 person's right to a hearing, specifying the steps he or she must take
30 to obtain a hearing. Within fifteen days after the notice has been

1 given, the person may, in writing, request a formal hearing. Upon
2 receipt of such request, the department shall afford the person an
3 opportunity for a hearing as provided in RCW 46.20.329 and 46.20.332.
4 The hearing shall be conducted in the county of the arrest. For the
5 purposes of this section, the scope of such hearing shall cover the
6 issues of whether a law enforcement officer had reasonable grounds to
7 believe the person had been driving or was in actual physical control
8 of a motor vehicle within this state while under the influence of
9 intoxicating liquor or any drug, whether the person was placed under
10 arrest, and whether the person refused to submit to the test or tests
11 upon request of the officer after having been informed that such
12 refusal would result in the revocation of the person's privilege to
13 drive. The department shall order that the revocation either be
14 rescinded or sustained. Any decision by the department revoking a
15 person's driving privilege shall be stayed and shall not take effect
16 while a formal hearing is pending as provided in this section or during
17 the pendency of a subsequent appeal to superior court so long as there
18 is no conviction for a moving violation or no finding that the person
19 has committed a traffic infraction that is a moving violation during
20 pendency of the hearing and appeal.

21 (8) If the revocation is sustained after such a hearing, the person
22 whose license, privilege, or permit is revoked has the right to file a
23 petition in the superior court of the county of arrest to review the
24 final order of revocation by the department in the manner provided in
25 RCW 46.20.334.

26 (9) When it has been finally determined under the procedures of
27 this section that a nonresident's privilege to operate a motor vehicle
28 in this state has been revoked, the department shall give information
29 in writing of the action taken to the motor vehicle administrator of

1 the state of the person's residence and of any state in which he or she
2 has a license.

3 **Sec. 2.** RCW 46.61.506 and 1987 c 373 s 4 are each amended to read
4 as follows:

5 (1) Upon the trial of any civil or criminal action or proceeding
6 arising out of acts alleged to have been committed by any person while
7 driving or in actual physical control of a vehicle while under the
8 influence of intoxicating liquor or any drug, if the amount of alcohol
9 in the person's blood or breath at the time alleged as shown by
10 analysis of his or her blood or breath is less than 0.10 percent by
11 weight of alcohol in his or her blood or 0.10 grams of alcohol per two
12 hundred ten liters of the person's breath, or analysis of the urine or
13 blood shows a quantitative and qualitative amount of any drug, it is
14 evidence that may be considered with other competent evidence in
15 determining whether the person was under the influence of intoxicating
16 liquor or any drug.

17 (2) The breath analysis shall be based upon grams of alcohol per
18 two hundred ten liters of breath. The foregoing provisions of this
19 section shall not be construed as limiting the introduction of any
20 other competent evidence bearing upon the question whether the person
21 was under the influence of intoxicating liquor or any drug.

22 (3) Analysis of the person's blood (~~(or)~~), breath, or urine to be
23 considered valid under the provisions of this section or RCW 46.61.502
24 or 46.61.504 shall have been performed according to methods approved by
25 the state toxicologist and by an individual possessing a valid permit
26 issued by the state toxicologist for this purpose. The state
27 toxicologist is directed to approve satisfactory techniques or methods,
28 to supervise the examination of individuals to ascertain their
29 qualifications and competence to conduct such analyses, and to issue

1 permits which shall be subject to termination or revocation at the
2 discretion of the state toxicologist.

3 (4) When a blood test is administered under the provisions of RCW
4 46.20.308, the withdrawal of blood for the purpose of determining its
5 alcoholic or drug content may be performed only by a physician, a
6 registered nurse, or a qualified technician. ~~((This))~~ When a urine
7 sample is obtained under the provisions of RCW 46.20.308, obtaining the
8 urine sample for the purpose of determining its alcoholic or drug
9 content may be performed only under the direction or supervision of a
10 physician, a registered nurse, or a qualified technician. These
11 limitations shall not apply to the taking of breath specimens.

12 (5) The person tested may have a physician, or a qualified
13 technician, chemist, registered nurse, or other qualified person of his
14 or her own choosing administer one or more tests in addition to any
15 administered at the direction of a law enforcement officer. The
16 failure or inability to obtain an additional test by a person shall not
17 preclude the admission of evidence relating to the test or tests taken
18 at the direction of a law enforcement officer.

19 (6) Upon the request of the person who shall submit to a test or
20 tests at the request of a law enforcement officer, full information
21 concerning the test or tests shall be made available to ~~((him))~~ the
22 person or his or her attorney.

23 **Sec. 3.** RCW 46.61.508 and 1977 ex.s. c 143 s 1 are each amended to
24 read as follows:

25 No physician, registered nurse, qualified technician, or hospital,
26 or duly licensed clinical laboratory employing or utilizing services of
27 such physician, registered nurse, or qualified technician, shall incur
28 any civil or criminal liability as a result of the act of withdrawing
29 blood or from directing or supervising the obtaining of a urine sample

1 from any person when directed by a law enforcement officer to do so for
2 the purpose of a blood or urine sample test under the provisions of RCW
3 46.20.308, as now or hereafter amended: PROVIDED, That nothing in this
4 section shall relieve any physician, registered nurse, qualified
5 technician, or hospital or duly licensed clinical laboratory from civil
6 liability arising from the use of improper procedures or failing to
7 exercise the required standard of care.

8 **Sec. 4.** RCW 46.61.517 and 1987 c 373 s 5 are each amended to read
9 as follows:

10 The refusal of a person to submit to a test of the alcoholic
11 content of the person's blood or breath or of the drug content of the
12 person's blood or urine under RCW 46.20.308 is admissible into evidence
13 at a subsequent criminal trial.