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**SUBSTITUTE SENATE BILL 5064**

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**State of Washington**

**52nd Legislature**

**1992 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators Nelson, Rasmussen, Oke, Johnson, Bailey and Thorsness)

Read first time 02/07/92.

1 AN ACT Relating to drivers' licenses; amending RCW 46.04.580,  
2 46.20.308, 46.20.311, 46.20.311, 46.20.391, 46.61.515, and 46.68.060;  
3 adding a new section to chapter 46.04 RCW; adding new sections to  
4 chapter 46.20 RCW; creating new sections; prescribing penalties;  
5 providing an effective date; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The purpose of this act is:

8 (1) To provide safety for all persons using the highways of this  
9 state by quickly suspending or revoking the driving privilege of those  
10 persons who have shown themselves to be safety hazards by driving with  
11 an excessive concentration of alcohol in their bodies; and

12 (2) To guard against the potential for any erroneous deprivation of  
13 the driving privilege by providing an opportunity for administrative  
14 review prior to the effective date of the suspension or revocation.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 46.04 RCW  
2 to read as follows:

3        "Alcohol concentration" means (1) the grams of alcohol per two  
4 hundred ten liters of a person's breath, or (2) the percent by weight  
5 of alcohol in a person's blood.

6        "Test" means the test of a person's breath for alcohol  
7 concentration by infrared test method consisting of the person  
8 insufflating deep lung air samples at least twice into the instrument  
9 sufficient to allow two separate measurements.    There must be  
10 sufficient time between the provision of each sample by the person to  
11 permit the instrument to measure each sample individually.    The two  
12 breath samples supplied by the individual shall constitute one test.  
13 An accurate test is presumed if the results of each measurement is  
14 within plus or minus ten percent of the average of the two  
15 measurements.

16        **Sec. 3.**    RCW 46.04.580 and 1990 c 250 s 22 are each amended to read  
17 as follows:

18        "Suspend," in all its forms, means invalidation for any period less  
19 than one calendar year and thereafter until reinstatement.    However,  
20 under RCW 46.61.515 and section 5 of this act the invalidation may last  
21 for more than one calendar year.

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

24        (1) Any person who operates a motor vehicle within this state is  
25 deemed to have given consent, subject to the provisions of RCW  
26 46.61.506, to a test or tests of his or her breath or blood for the  
27 purpose of determining the alcoholic content of his or her breath or  
28 blood if arrested for any offense where, at the time of the arrest, the

1 arresting officer has reasonable grounds to believe the person had been  
2 driving or was in actual physical control of a motor vehicle while  
3 under the influence of intoxicating liquor.

4 (2) The test or tests of breath shall be administered at the  
5 direction of a law enforcement officer having reasonable grounds to  
6 believe the person to have been driving or in actual physical control  
7 of a motor vehicle within this state while under the influence of  
8 intoxicating liquor. However, in those instances where: ~~((a))~~ The  
9 person is incapable due to physical injury, physical incapacity, or  
10 other physical limitation, of providing a breath sample; or ~~((b) as a~~  
11 ~~result of a traffic accident))~~ the person is being treated for a  
12 medical condition in a hospital, clinic, doctor's office, or other  
13 similar facility in which a breath testing instrument is not present,  
14 a blood test shall be administered by a qualified person as provided in  
15 RCW 46.61.506(4). The officer shall inform the person of his or her  
16 right to refuse the breath or blood test, and of his or her right to  
17 have additional tests administered by any qualified person of his or  
18 her choosing as provided in RCW 46.61.506. The officer shall warn the  
19 driver that (a) his or her privilege to drive will be revoked or denied  
20 if he or she refuses to submit to the test, ~~((and))~~ (b) that his or her  
21 privilege to drive will be suspended, revoked, or denied if the test is  
22 administered and the test indicates the alcohol concentration of the  
23 person's breath or blood meets or exceeds the limits set forth in RCW  
24 46.61.502 (1) and (2), and (c) that his or her refusal to take the test  
25 may be used in a criminal trial.

26 (3) Except as provided in this section, the test administered shall  
27 be of the breath only. If an individual is unconscious or is under  
28 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
29 or vehicular assault as provided in RCW 46.61.522, or if an individual  
30 is under arrest for the crime of driving while under the influence of

1 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest  
2 results from an accident in which another person has been injured and  
3 there is a reasonable likelihood that such other person may die as a  
4 result of injuries sustained in the accident, a breath or blood test  
5 may be administered without the consent of the individual so arrested.

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

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

17 (6) If, after arrest and after the other applicable conditions and  
18 requirements of this section have been satisfied, a test or tests of  
19 the person's blood or breath is administered and the test results  
20 indicate that the alcohol concentration of the person's breath or blood  
21 is 0.10 or more, or the person refuses to submit to a test, the  
22 arresting officer or other law enforcement officer at whose direction  
23 any test has been given, or the department if the arrest is the result  
24 of a blood test, shall:

25 (a) Serve notice in writing on the person on behalf of the  
26 department of its intention to suspend, revoke, or deny the person's  
27 license, permit, or privilege to drive as required by subsection (7) of  
28 this section;

29 (b) Serve notice in writing on the person on behalf of the  
30 department of his or her right to a hearing, specifying the steps he or

1 she must take to obtain a hearing. Within ten days after the notice  
2 has been given, the person may, in writing, request a formal hearing as  
3 provided by subsection (8) of this section. If such request is made by  
4 mail it must be postmarked within ten days after the notice has been  
5 given;

6 (c) Confiscate the person's Washington state license or permit to  
7 drive, if any;

8 (d) Issue a temporary license to be effective twelve hours after  
9 the time of arrest and valid for forty-five days from the date of  
10 arrest or until the suspension, revocation, or denial of the person's  
11 license, permit, or privilege to drive is sustained at a hearing  
12 pursuant to subsection (8) of this section, whichever occurs first. No  
13 temporary license is valid to any greater degree than the license or  
14 permit that it replaces;

15 (e) Immediately notify the department of licensing of the arrest  
16 and transmit to the department of licensing any confiscated license or  
17 permit and a sworn report that states:

18 (i) That the officer had reasonable grounds to believe the arrested  
19 person had been driving or was in actual physical control of a motor  
20 vehicle within this state while under the influence of intoxicating  
21 liquor or drugs, or both;

22 (ii) That after receipt of the warnings required by subsection (2)  
23 of this section the person refused to submit to a test of his or her  
24 blood or breath, or a test was administered and the results indicated  
25 that the alcohol concentration of the person's breath or blood was 0.10  
26 or more; and

27 (iii) Any other information that the director may require by rule  
28 or regulation.

29 (7) The department of licensing, upon the receipt of a sworn report  
30 of the law enforcement officer that the officer had reasonable grounds

1 to believe the arrested person had been driving or was in actual  
2 physical control of a motor vehicle within this state while under the  
3 influence of intoxicating liquor and that (a) the person had refused to  
4 submit to the test or tests upon the request of the law enforcement  
5 officer after being informed that refusal would result in the  
6 revocation of the person's privilege to drive, or (b) a test was  
7 administered and the results indicated that the alcohol concentration  
8 of the person's breath or blood was 0.10 or more, shall suspend,  
9 revoke, or deny the person's license or permit to drive or any  
10 nonresident operating privilege, such suspension, revocation, or denial  
11 to be effective forty-five days from the date of arrest or when  
12 sustained at a hearing pursuant to subsection (8) of this section,  
13 whichever occurs first.

14 ~~((7) Upon revoking the license or permit to drive or the~~  
15 ~~nonresident operating privilege of any person, the department shall~~  
16 ~~immediately notify the person involved in writing by personal service~~  
17 ~~or by certified mail of its decision and the grounds therefor, and of~~  
18 ~~the person's right to a hearing, specifying the steps he or she must~~  
19 ~~take to obtain a hearing. Within fifteen days after the notice has~~  
20 ~~been given, the person may, in writing, request a formal hearing.))~~

21 (8) Upon timely receipt of ((such)) a request for a formal hearing,  
22 the department shall afford the person an opportunity for a hearing as  
23 provided in RCW 46.20.329 and 46.20.332. The hearing shall be  
24 conducted in the county of the arrest, except that all or part of the  
25 hearing may, at the discretion of the department, be conducted by  
26 telephone or other electronic means. For the purposes of this section,  
27 the scope of ((such)) the hearing shall cover the issues of whether a  
28 law enforcement officer had reasonable grounds to believe the person  
29 had been driving or was in actual physical control of a motor vehicle  
30 within this state while under the influence of intoxicating liquor,

1 whether the person was placed under arrest, and whether (a) the person  
2 refused to submit to the test or tests upon request of the officer  
3 after having been informed that such refusal would result in the  
4 revocation of the person's privilege to drive or, (b) if a test was  
5 administered, whether the applicable requirements of this section were  
6 satisfied before the administration of the test or tests, whether the  
7 person submitted to the test or tests, or whether a test was  
8 administered without express consent as permitted under this section,  
9 and whether the test or tests indicated that the alcohol concentration  
10 of the person's breath or blood was 0.10 or more. The sworn report  
11 submitted by a law enforcement officer shall be prima facie evidence  
12 that the officer had reasonable grounds to believe the person had been  
13 driving or was in actual physical control of a motor vehicle within  
14 this state while under the influence of intoxicating liquor, that the  
15 officer complied with the requirements of this section, and that the  
16 testing instrument was in proper working condition. ((The department  
17 shall order that the revocation either be rescinded or sustained. Any  
18 decision by the department revoking a person's driving privilege shall  
19 be stayed and shall not take effect while a formal hearing is pending  
20 as provided in this section or during the pendency of a subsequent  
21 appeal to superior court so long as there is no conviction for a moving  
22 violation or no finding that the person has committed a traffic  
23 infraction that is a moving violation during pendency of the hearing  
24 and appeal.

25 ~~(8))~~ (9) Failure of the person to request a hearing within the  
26 time limit established by subsection (6) of this section, or failure to  
27 attend or participate in such a hearing, constitutes a default and  
28 results in the loss of that person's right to a hearing.

29 (10) If the suspension, revocation, or denial is sustained after  
30 such a hearing, the person whose license, privilege, or permit is

1 suspended, revoked, or denied has the right to file a petition in the  
2 superior court of the county of arrest to review the final order of  
3 suspension, revocation, or denial by the department in the manner  
4 provided in RCW 46.20.334. The filing of the appeal does not stay the  
5 effective date of the suspension, revocation, or denial. A petition  
6 filed under this subsection must include the petitioner's grounds for  
7 requesting review. Upon granting petitioner's request for review, the  
8 court shall review the department's final order of suspension,  
9 revocation, or denial as expeditiously as possible. If judicial relief  
10 is sought for a stay or other temporary remedy from the department's  
11 action, the court shall not grant such relief unless the court finds  
12 that:

13 (a) The petitioner is likely to prevail when the court finally  
14 disposes of the matter;

15 (b) Without relief the petitioner will suffer irreparable injury;  
16 and

17 (c) The threat to the safety of persons on the public highways is  
18 not sufficiently serious to justify the department's action in the  
19 circumstances.

20 ~~((+9))~~ (11) When it has been finally determined under the  
21 procedures of this section that a nonresident's privilege to operate a  
22 motor vehicle in this state has been suspended, revoked, or denied the  
23 department shall give information in writing of the action taken to the  
24 motor vehicle administrator of the state of the person's residence and  
25 of any state in which he or she has a license.

26 NEW SECTION. Sec. 5. A new section is added to chapter 46.20 RCW  
27 to read as follows:

1 (1) Pursuant to RCW 46.20.308, the department shall suspend,  
2 revoke, or deny the arrested person's license, permit to drive, driving  
3 privilege, or any nonresident privilege as follows:

4 (a) In the case of a person who has refused a test or tests:

5 (i) For a first refusal within five years preceding the date of  
6 refusal, revocation or denial for one year;

7 (ii) For a second or subsequent refusal within five years preceding  
8 the date of refusal, revocation or denial for two years.

9 (b) In the case of an incident where a person has submitted to or  
10 been administered a test or tests indicating that the alcohol  
11 concentration of the person's breath or blood was 0.10 or more:

12 (i) For a first incident within five years, where there has been no  
13 previous conviction of RCW 46.61.502 or 46.61.504 within the five-year  
14 period preceding the current incident, suspension, or denial until the  
15 person reaches age nineteen or for ninety days, whichever is longer;

16 (ii) For a second incident within five years, revocation or denial  
17 for one year. A previous conviction under RCW 46.61.502 or 46.61.504  
18 within the five-year period preceding the current incident, that did  
19 not result in a suspension or denial under this subsection, shall be  
20 considered a previous incident for purposes of this subsection;

21 (iii) For a third or subsequent incident within five years,  
22 revocation or denial for two years. Previous convictions under RCW  
23 46.61.502, 46.61.504, 46.61.520, or 46.61.522 within the five-year  
24 period preceding the current incident, that did not result in a  
25 suspension, revocation, or denial under this subsection, shall be  
26 considered previous incidents for purposes of this subsection.

27 (2) A diagnostic evaluation and treatment recommendation shall be  
28 prepared by an alcoholism agency approved by the department of social  
29 and health services or a qualified probation department approved by the  
30 department of social and health services. A copy of the report shall

1 be forwarded to the department of licensing. The department shall not  
2 grant or reinstate a person's privilege to drive that has been  
3 suspended, revoked, or denied under subsection (1) of this section  
4 until it has determined the person's eligibility for licensing based  
5 upon the report provided by an approved alcoholism agency or probation  
6 department and shall deny reinstatement until enrollment and  
7 participation in an approved program has been established and the  
8 person is otherwise qualified.

9       **Sec. 6.** RCW 46.20.311 and 1990 c 250 s 45 are each amended to read  
10 as follows:

11       (1) The department shall not suspend a driver's license or  
12 privilege to drive a motor vehicle on the public highways for a fixed  
13 period of more than one year, except as permitted under RCW 46.20.342  
14 or 46.61.515. Whenever the license or driving privilege of any person  
15 is suspended by reason of a conviction, a finding that a traffic  
16 infraction has been committed, pursuant to chapter 46.29 RCW, or  
17 pursuant to RCW 46.20.291, the suspension shall remain in effect until  
18 the person gives and thereafter maintains proof of financial  
19 responsibility for the future as provided in chapter 46.29 RCW. The  
20 department shall not issue to the person a new, duplicate, or renewal  
21 license until the person pays a reissue fee of twenty dollars. If the  
22 suspension is the result of a violation of RCW 46.61.502 or 46.61.504,  
23 the reissue fee shall be (~~fifty~~) one hundred dollars.

24       (2) Any person whose license or privilege to drive a motor vehicle  
25 on the public highways has been revoked, unless the revocation was for  
26 a cause which has been removed, is not entitled to have the license or  
27 privilege renewed or restored until: (a) After the expiration of one  
28 year from the date the license or privilege to drive was revoked; (b)  
29 after the expiration of the applicable revocation period provided by

1 RCW 46.61.515(3) (b) or (c); (c) after the expiration of two years for  
2 persons convicted of vehicular homicide; (d) after the expiration of  
3 one year in cases of revocation for the first refusal within five years  
4 to submit to a chemical test under RCW 46.20.308; (e) after the  
5 expiration of two years in cases of revocation for the second refusal  
6 within five years to submit to a chemical test under RCW 46.20.308; or  
7 (f) after the expiration of the applicable revocation period provided  
8 by RCW 46.20.265. After the expiration of the appropriate period, the  
9 person may make application for a new license as provided by law  
10 together with a reissue fee in the amount of twenty dollars, but if the  
11 revocation is the result of a violation of RCW 46.20.308, 46.61.502, or  
12 46.61.504, the reissue fee shall be (~~fifty~~) one hundred dollars.  
13 Except for a revocation under RCW 46.20.265, the department shall not  
14 then issue a new license unless it is satisfied after investigation of  
15 the driving ability of the person that it will be safe to grant the  
16 privilege of driving a motor vehicle on the public highways, and until  
17 the person gives and thereafter maintains proof of financial  
18 responsibility for the future as provided in chapter 46.29 RCW. For a  
19 revocation under RCW 46.20.265, the department shall not issue a new  
20 license unless it is satisfied after investigation of the driving  
21 ability of the person that it will be safe to grant that person the  
22 privilege of driving a motor vehicle on the public highways.

23 (3) Whenever the driver's license of any person is suspended  
24 pursuant to Article IV of the nonresident violators compact or RCW  
25 46.23.020, the department shall not issue to the person any new or  
26 renewal license until the person pays a reissue fee of twenty dollars.  
27 If the suspension is the result of a violation of the laws of another  
28 state, province, or other jurisdiction involving (a) the operation or  
29 physical control of a motor vehicle upon the public highways while  
30 under the influence of intoxicating liquor or drugs, or (b) the refusal

1 to submit to a chemical test or tests of the driver's breath or blood  
2 alcohol content, the reissue fee shall be ~~((fifty))~~ one hundred  
3 dollars.

4 **Sec. 7.** RCW 46.20.311 and 1992 c ... s 6 (section 6 of this act)  
5 are each amended to read as follows:

6 (1) The department shall not suspend a driver's license or  
7 privilege to drive a motor vehicle on the public highways for a fixed  
8 period of more than one year, except as permitted under RCW 46.20.342  
9 ~~((or))~~, 46.61.515, or section 5 of this act. Except for a suspension  
10 under section 5(1)(b)(i) of this act, whenever the license or driving  
11 privilege of any person is suspended by reason of a conviction, a  
12 finding that a traffic infraction has been committed, pursuant to  
13 chapter 46.29 RCW, or pursuant to RCW 46.20.291 ~~((or 46.20.308))~~, the  
14 suspension shall remain in effect until the person gives and thereafter  
15 maintains proof of financial responsibility for the future as provided  
16 in chapter 46.29 RCW. The department shall not issue to the person a  
17 new, duplicate, or renewal license until the person pays a reissue fee  
18 of twenty dollars. If the suspension is the result of a violation of  
19 RCW 46.61.502 or 46.61.504 or was imposed under RCW 46.20.308, the  
20 reissue fee shall be one hundred dollars. If the suspension was  
21 imposed under section 5(1)(b)(i) of this act, the suspension shall  
22 remain in effect and the department shall not issue any new, duplicate,  
23 or renewal license until the person pays a reinstatement fee of one  
24 hundred dollars.

25 (2) Any person whose license or privilege to drive a motor vehicle  
26 on the public highways has been revoked, unless the revocation was for  
27 a cause which has been removed, is not entitled to have the license or  
28 privilege renewed or restored until: (a) After the expiration of one  
29 year from the date the license or privilege to drive was revoked; (b)

1 after the expiration of the applicable revocation period provided by  
2 RCW 46.61.515(3) (b) or (c); (c) after the expiration of two years for  
3 persons convicted of vehicular homicide; (d) after the expiration of  
4 ~~((one year in cases of revocation for the first refusal within five~~  
5 ~~years to submit to a chemical test under RCW 46.20.308; (e) after the~~  
6 ~~expiration of two years in cases of revocation for the second refusal~~  
7 ~~within five years to submit to a chemical test under RCW 46.20.308; or~~  
8 ~~(f))~~ the applicable revocation period provided by section 5 of this  
9 act; or (e) after the expiration of the applicable revocation period  
10 provided by RCW 46.20.265. After the expiration of the appropriate  
11 period, the person may make application for a new license as provided  
12 by law together with a reissue fee in the amount of twenty dollars, but  
13 if the revocation is the result of a violation of RCW 46.20.308,  
14 46.61.502, or 46.61.504 or was imposed under RCW 46.20.308, the reissue  
15 fee shall be one hundred dollars. Except for a revocation under RCW  
16 46.20.265, the department shall not then issue a new license unless it  
17 is satisfied after investigation of the driving ability of the person  
18 that it will be safe to grant the privilege of driving a motor vehicle  
19 on the public highways, and until the person gives and thereafter  
20 maintains proof of financial responsibility for the future as provided  
21 in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the  
22 department shall not issue a new license unless it is satisfied after  
23 investigation of the driving ability of the person that it will be safe  
24 to grant that person the privilege of driving a motor vehicle on the  
25 public highways.

26 (3) Whenever the driver's license of any person is suspended  
27 pursuant to Article IV of the nonresident violators compact or RCW  
28 46.23.020, the department shall not issue to the person any new or  
29 renewal license until the person pays a reissue fee of twenty dollars.  
30 If the suspension is the result of a violation of the laws of another

1 state, province, or other jurisdiction involving (a) the operation or  
2 physical control of a motor vehicle upon the public highways while  
3 under the influence of intoxicating liquor or drugs, or (b) the refusal  
4 to submit to a chemical test or tests of the driver's breath or blood  
5 alcohol content, the reissue fee shall be one hundred dollars.

6 **Sec. 8.** RCW 46.20.391 and 1985 c 407 s 5 are each amended to read  
7 as follows:

8 (1) Any person licensed under this chapter whose driving privilege  
9 has been suspended under section 5 (1)(b)(i) of this act or who is  
10 convicted of an offense relating to motor vehicles for which suspension  
11 or revocation of the driver's license is mandatory, other than  
12 vehicular homicide or vehicular assault, may submit to the department  
13 an application for an occupational driver's license. The department,  
14 upon receipt of the prescribed fee and upon determining that the  
15 petitioner is engaged in an occupation or trade that makes it essential  
16 that the petitioner operate a motor vehicle, may issue an occupational  
17 driver's license and may set definite restrictions as provided in RCW  
18 46.20.394. No person may petition for, and the department shall not  
19 issue, an occupational driver's license that is effective during the  
20 first thirty days of any suspension or revocation imposed under RCW  
21 46.61.515 or section 5 (1)(b)(i) of this act. A person aggrieved by  
22 the decision of the department on the application for an occupational  
23 driver's license may request a hearing as provided by rule of the  
24 department.

25 (2) An applicant for an occupational driver's license is eligible  
26 to receive such license only if:

27 (a) Within one year immediately preceding the present conviction or  
28 administrative action, the applicant has not been convicted of any

1 offense relating to motor vehicles for which suspension or revocation  
2 of a driver's license is mandatory; and

3 (b) Within five years immediately preceding the present conviction  
4 or administrative action, the applicant has not been convicted of  
5 driving or being in actual physical control of a motor vehicle while  
6 under the influence of intoxicating liquor under RCW 46.61.502 or  
7 46.61.504, of vehicular homicide under RCW 46.61.520, or of vehicular  
8 assault under RCW 46.61.522, or had a license administratively  
9 suspended or revoked under section 5 (1)(b)(i) of this act; and

10 (c) The applicant is engaged in an occupation or trade that makes  
11 it essential that he or she operate a motor vehicle; and

12 (d) The applicant files satisfactory proof of financial  
13 responsibility pursuant to chapter 46.29 RCW, unless the suspension was  
14 imposed under section 5(1)(b)(i) of this act.

15 (3) The director shall cancel an occupational driver's license upon  
16 receipt of notice that the holder thereof has had a driver's license  
17 administratively suspended or revoked under RCW 46.20.308 or has been  
18 convicted of operating a motor vehicle in violation of its  
19 restrictions, or of an offense that pursuant to chapter 46.20 RCW would  
20 warrant suspension or revocation of a regular driver's license. The  
21 cancellation is effective as of the date of the conviction, and  
22 continues with the same force and effect as any suspension or  
23 revocation under this title.

24 NEW SECTION. **Sec. 9.** A new section is added to chapter 46.20 RCW  
25 to read as follows:

26 (1) Any person licensed under this chapter or any nonresident  
27 granted the privilege of driving a motor vehicle on the highways of  
28 this state, whose driver's license or driving privilege has been  
29 suspended or revoked, other than for vehicular homicide, vehicular

1 assault, or under section 5(1)(a) of this act, or for a physical or  
2 mental disability that would affect that person's ability to operate a  
3 motor vehicle with safety upon the highways, may submit to the  
4 department an application for a provisional driver's license for  
5 purposes of participation in an alcohol or drug abuse treatment program  
6 approved by the department of social and health services. The  
7 department, upon receipt of the fee prescribed by this section and upon  
8 determining that the applicant is engaged in a treatment program  
9 approved by the department of social and health services that makes it  
10 essential that the applicant operate a motor vehicle, may issue a  
11 provisional driver's license. No person may petition for, and the  
12 department shall not issue, a provisional driver's license that is  
13 effective during the first thirty days of any suspension or revocation  
14 imposed under RCW 46.61.515 or section 5 of this act.

15 (2) An applicant for a provisional driver's license is eligible to  
16 receive such license only if:

17 (a) The applicant is engaged in a program of treatment that makes  
18 it essential that he or she operate a motor vehicle; and

19 (b) The applicant files satisfactory proof of financial  
20 responsibility pursuant to chapter 46.29 RCW, unless the suspension was  
21 imposed under section 5(1)(b)(i) of this act; and

22 (c) The applicant pays to the department a treatment assessment fee  
23 of twenty-five dollars, such fee to be deposited in a special sober or  
24 suspended account, within the department of social and health services,  
25 to be administered by the division of alcohol and substance abuse, to  
26 be used to pay the cost of the diagnostic evaluation or assessment  
27 required under section 5(2) of this act for indigent or low-income  
28 individuals.

29 (3) In issuing a provisional driver's license under this section,  
30 the department shall set forth in detail the specific hours of the day

1 during which the person may drive to and from his or her place of  
2 treatment; the days of the week during which the license may be used;  
3 the general routes over which the person may travel; and the expiration  
4 date of the license, such date to correspond to the ending date of any  
5 suspension or revocation of the person's driver's license or driving  
6 privilege, or the date the person's treatment program is to be  
7 concluded, whichever occurs first. These restrictions shall be  
8 prepared in written form by the department, such document to be carried  
9 in the vehicle at all times and presented to a law enforcement officer  
10 under the same terms as the provisional driver's license. Any  
11 violation of the restrictions constitutes a violation of RCW 46.20.342  
12 and subjects the person to all procedures and penalties therefor.

13 (4) The department shall cancel a provisional driver's license upon  
14 receipt of notice that the holder thereof has been convicted of  
15 operating a motor vehicle in violation of its restrictions, or of an  
16 offense that pursuant to this chapter would warrant suspension or  
17 revocation of a regular driver's license, or upon the recommendation of  
18 a treatment agency for nonparticipation in a treatment program. The  
19 cancellation is effective as of the date of the conviction, or the date  
20 a recommendation is accepted from a treatment agency, and continues  
21 with the same force and effect as any suspension or revocation under  
22 this title.

23 **Sec. 10.** RCW 46.61.515 and 1985 c 352 s 1 are each amended to read  
24 as follows:

25 (1) Every person who is convicted of a violation of RCW 46.61.502  
26 or 46.61.504 shall be punished by imprisonment for not less than  
27 twenty-four consecutive hours nor more than one year, and by a fine of  
28 not less than two hundred fifty dollars and not more than one thousand  
29 dollars. Unless the judge finds the person to be indigent, two hundred

1 fifty dollars of the fine shall not be suspended or deferred. Twenty-  
2 four consecutive hours of the jail sentence shall not be suspended or  
3 deferred unless the judge finds that the imposition of the jail  
4 sentence will pose a risk to the defendant's physical or mental well-  
5 being. Whenever the mandatory jail sentence is suspended or deferred,  
6 the judge must state, in writing, the reason for granting the  
7 suspension or deferral and the facts upon which the suspension or  
8 deferral is based. The court may impose conditions of probation that  
9 may include nonrepetition, alcohol or drug treatment, supervised  
10 probation, or other conditions that may be appropriate. The convicted  
11 person shall, in addition, be required to complete a course in an  
12 alcohol information school approved by the department of social and  
13 health services or more intensive treatment in a program approved by  
14 the department of social and health services, as determined by the  
15 court. A diagnostic evaluation and treatment recommendation shall be  
16 prepared under the direction of the court by an alcoholism agency  
17 approved by the department of social and health services or a qualified  
18 probation department approved by the department of social and health  
19 services. A copy of the report shall be forwarded to the department of  
20 licensing. Based on the diagnostic evaluation, the court shall  
21 determine whether the convicted person shall be required to complete a  
22 course in an alcohol information school approved by the department of  
23 social and health services or more intensive treatment in a program  
24 approved by the department of social and health services. Standards  
25 for approval for alcohol treatment programs shall be prescribed by rule  
26 under the administrative procedure act, chapter 34.05 RCW. The courts  
27 shall periodically review the costs of alcohol information schools and  
28 treatment programs within their jurisdictions.

29 (2) On a second or subsequent conviction for driving or being in  
30 physical control of a motor vehicle while under the influence of

1 intoxicating liquor or drugs within a five-year period a person shall  
2 be punished by imprisonment for not less than seven days nor more than  
3 one year and by a fine of not less than five hundred dollars and not  
4 more than two thousand dollars. District courts and courts organized  
5 under chapter 35.20 RCW are authorized to impose such fine. Unless the  
6 judge finds the person to be indigent, five hundred dollars of the fine  
7 shall not be suspended or deferred. The jail sentence shall not be  
8 suspended or deferred unless the judge finds that the imposition of the  
9 jail sentence will pose a risk to the defendant's physical or mental  
10 well-being. Whenever the mandatory jail sentence is suspended or  
11 deferred, the judge must state, in writing, the reason for granting the  
12 suspension or deferral and the facts upon which the suspension or  
13 deferral is based. If, at the time of a second or subsequent  
14 conviction, the driver is without a license or permit because of a  
15 previous suspension or revocation, the minimum mandatory sentence shall  
16 be ninety days in jail and a two hundred dollar fine. The penalty so  
17 imposed shall not be suspended or deferred. The person shall, in  
18 addition, be required to complete a diagnostic evaluation by an  
19 alcoholism agency approved by the department of social and health  
20 services or a qualified probation department approved by the department  
21 of social and health services. The report shall be forwarded to the  
22 department of licensing. If the person is found to have an alcohol or  
23 drug problem requiring treatment, the person shall complete treatment  
24 at an approved alcoholism treatment facility or approved drug treatment  
25 center.

26 In addition to any nonsuspendable and nondeferrable jail sentence  
27 required by this subsection, the court shall sentence a person to a  
28 term of imprisonment not exceeding one hundred eighty days and shall  
29 suspend but shall not defer the sentence for a period not exceeding two  
30 years. The suspension of the sentence may be conditioned upon

1 nonrepetition, alcohol or drug treatment, supervised probation, or  
2 other conditions that may be appropriate. The sentence may be imposed  
3 in whole or in part upon violation of a condition of suspension during  
4 the suspension period.

5 (3) The license or permit to drive or any nonresident privilege of  
6 any person convicted of driving or being in physical control of a motor  
7 vehicle while under the influence of intoxicating liquor or drugs  
8 shall:

9 (a) On the first conviction under either offense, where there has  
10 been no previous suspension or denial imposed under section 5(1)(b) of  
11 this act for the incident upon which the conviction is based, or where  
12 there has been no previous incident resulting in a suspension,  
13 revocation, or denial under section 5(1)(b) of this act within the  
14 five-year period preceding the current conviction, be suspended by the  
15 department until the person reaches age nineteen or for ninety days,  
16 whichever is longer. The department of licensing shall determine the  
17 person's eligibility for licensing based upon the reports provided by  
18 the designated alcoholism agency, drug treatment center, or probation  
19 department and shall deny reinstatement until enrollment and  
20 participation in an approved program has been established and the  
21 person is otherwise qualified;

22 (b) On a second conviction under either offense within a five-year  
23 period, where there has been no previous revocation or denial imposed  
24 under section 5(1)(b) of this act for the incident upon which the  
25 conviction is based, be revoked by the department for one year. A  
26 previous incident resulting in a suspension, revocation, or denial  
27 under section 5(1)(b) of this act within the five-year period preceding  
28 the current conviction shall be considered a previous conviction for  
29 purposes of this subsection. The department of licensing shall  
30 determine the person's eligibility for licensing based upon the reports

1 provided by the designated alcoholism agency, drug treatment center, or  
2 probation department and shall deny reinstatement until satisfactory  
3 progress in an approved program has been established and the person is  
4 otherwise qualified;

5 (c) On a third or subsequent conviction of driving or being in  
6 physical control of a motor vehicle while under the influence of  
7 intoxicating liquor or drugs, vehicular homicide, or vehicular assault,  
8 or any combination thereof within a five-year period, where there has  
9 been no previous revocation or denial imposed under section 5(1)(b) of  
10 this act for the incident upon which the conviction is based, be  
11 revoked by the department for two years. Previous incidents resulting  
12 in suspension, revocation, or denial under section 5(1)(b) of this act  
13 within the five-year period preceding the current conviction shall be  
14 considered previous convictions for purposes of this subsection.

15 (4) In any case provided for in this section, where a driver's  
16 license is to be revoked or suspended, the revocation or suspension  
17 shall be stayed and shall not take effect until after the determination  
18 of any appeal from the conviction which may lawfully be taken, but in  
19 case the conviction is sustained on appeal the revocation or suspension  
20 takes effect as of the date that the conviction becomes effective for  
21 other purposes.

22 **Sec. 11.** RCW 46.68.060 and 1969 c 99 s 11 are each amended to read  
23 as follows:

24 (1) There is hereby created in the state treasury a fund to be  
25 known as the highway safety fund to the credit of which shall be  
26 deposited all moneys directed by law to be deposited therein. This  
27 fund shall be used for carrying out the provisions of law relating to  
28 driver licensing, driver improvement, financial responsibility, cost of  
29 furnishing abstracts of driving records ~~((and))~~, maintaining ~~((such))~~

1 the case records((~~and~~)) necessary to carry out the purposes set forth  
2 in RCW 43.59.010, and as otherwise provided in subsection (2) of this  
3 section.

4 (2) The sum of ten dollars shall be paid from the highway safety  
5 fund to law enforcement agencies for each reissue fee collected under  
6 RCW 46.20.311 due to a suspension or revocation arising from an arrest  
7 under RCW 46.61.502 or 46.61.504 as reimbursement for the required  
8 administrative procedures.

9 NEW SECTION. Sec. 12. The traffic safety commission shall  
10 undertake a study of the effectiveness of this act and shall report its  
11 finding to the governor and the appropriate legislative committees  
12 within thirty months of the effective date of this section.

13 NEW SECTION. Sec. 13. If any provision of this act or its  
14 application to any person or circumstance is held invalid, the  
15 remainder of the act or the application of the provision to other  
16 persons or circumstances is not affected.

17 NEW SECTION. Sec. 14. The department may adopt rules necessary  
18 to carry out this act.

19 NEW SECTION. Sec. 15. Section 6 of this act is necessary for  
20 the immediate preservation of the public peace, health, or safety, or  
21 support of the state government and its existing public institutions,  
22 and shall take effect immediately. The remainder of this act shall  
23 take effect on July 1, 1992. The director of licensing may immediately  
24 take such steps as are necessary to insure that all sections of this  
25 act are implemented on their respective effective dates.