

2 SSB 5341 - S AMD - 000324

3 By Senator Nelson

4

5 On page 4, after line 12, insert the following:

6 NEW SECTION. **Sec. 2.** The purpose of sections 2 through 16 of
7 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.

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 46.04 RCW
16 to read as follows:

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

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 46.04 RCW
21 to read as follows:

22 "Test" means the test of a person's breath for alcohol
23 concentration by infrared test method consisting of the person
24 insufflating deep lung air samples at least twice into the instrument
25 sufficient to allow two separate measurements. There must be
26 sufficient time between the provision of each sample by the person to
27 permit the instrument to measure each sample individually. The two
28 breath samples supplied by the individual shall constitute one test.
29 An accurate test is presumed if the results of each measurement is
30 within plus or minus ten percent of the average of the two
31 measurements.

32 **Sec. 5.** RCW 46.04.580 and 1990 c 250 s 22 are each amended to read
33 as follows:

1 "Suspend," in all its forms, means invalidation for any period less
2 than one calendar year and thereafter until reinstatement. However,
3 under RCW 46.61.515 and section 7 of this act the invalidation may last
4 for more than one calendar year.

5 **Sec. 6.** RCW 46.20.308 and 1989 c 337 s 8 are each amended to read
6 as follows:

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

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

37 (3) Except as provided in this section, the test administered shall
38 be of the breath only. If an individual is unconscious or is under

1 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
2 or vehicular assault as provided in RCW 46.61.522, or if an individual
3 is under arrest for the crime of driving while under the influence of
4 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
5 results from an accident in which another person has been injured and
6 there is a reasonable likelihood that such other person may die as a
7 result of injuries sustained in the accident, a breath or blood test
8 may be administered without the consent of the individual so arrested.

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

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

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

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

32 (b) Serve notice in writing on the person on behalf of the
33 department of his or her right to a hearing, specifying the steps he or
34 she must take to obtain a hearing. Within ten days after the notice
35 has been given, the person may, in writing, request a formal hearing as
36 provided by subsection (8) of this section. If such request is made by
37 mail it must be postmarked within ten days after the notice has been
38 given;

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

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

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

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

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

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

24 (7) The department of licensing, upon the receipt of a sworn report
25 of the law enforcement officer that the officer had reasonable grounds
26 to believe the arrested person had been driving or was in actual
27 physical control of a motor vehicle within this state while under the
28 influence of intoxicating liquor and that (a) the person had refused to
29 submit to the test or tests upon the request of the law enforcement
30 officer after being informed that refusal would result in the
31 revocation of the person's privilege to drive, or (b) a test was
32 administered and the results indicated that the alcohol concentration
33 of the person's breath or blood was 0.10 or more, shall suspend,
34 revoke, or deny the person's license or permit to drive or any
35 nonresident operating privilege, such suspension, revocation, or denial
36 to be effective forty-five days from the date of arrest or when
37 sustained at a hearing pursuant to subsection (8) of this section,
38 whichever occurs first.

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

8 (8) Upon timely receipt of ((such)) a request for a formal hearing,
9 the department shall afford the person an opportunity for a hearing as
10 provided in RCW 46.20.329 and 46.20.332. The hearing shall be
11 conducted in the county of the arrest, except that all or part of the
12 hearing may, at the discretion of the department, be conducted by
13 telephone or other electronic means. For the purposes of this section,
14 the scope of ((such)) the hearing shall cover the issues of whether a
15 law enforcement officer had reasonable grounds to believe the person
16 had been driving or was in actual physical control of a motor vehicle
17 within this state while under the influence of intoxicating liquor,
18 whether the person was placed under arrest, and whether (a) the person
19 refused to submit to the test or tests upon request of the officer
20 after having been informed that such refusal would result in the
21 revocation of the person's privilege to drive or, (b) if a test was
22 administered, whether the applicable requirements of this section were
23 satisfied before the administration of the test or tests, whether the
24 person submitted to the test or tests, or whether a test was
25 administered without express consent as permitted under this section,
26 and whether the test or tests indicated that the alcohol concentration
27 of the person's breath or blood was 0.10 or more. The sworn report
28 submitted by a law enforcement officer shall be prima facie evidence
29 that the officer had reasonable grounds to believe the person had been
30 driving or was in actual physical control of a motor vehicle within
31 this state while under the influence of intoxicating liquor, that the
32 officer complied with the requirements of this section, and that the
33 testing instrument was in proper working condition. (~~The department~~
34 ~~shall order that the revocation either be rescinded or sustained.~~ Any
35 decision by the department revoking a person's driving privilege shall
36 be stayed and shall not take effect while a formal hearing is pending
37 as provided in this section or during the pendency of a subsequent
38 appeal to superior court so long as there is no conviction for a moving
39 violation or no finding that the person has committed a traffic

1 ~~infraction that is a moving violation during pendency of the hearing~~
2 ~~and appeal.~~

3 ~~(8))~~ (9) Failure of the person to request a hearing within the
4 time limit established by subsection (6) of this section, or failure to
5 attend or participate in such a hearing, constitutes a default and
6 results in the loss of that person's right to a hearing.

7 (10) If the suspension, revocation, or denial is sustained after
8 such a hearing, the person whose license, privilege, or permit is
9 suspended, revoked, or denied has the right to file a petition in the
10 superior court of the county of arrest to review the final order of
11 suspension, revocation, or denial by the department in the manner
12 provided in RCW 46.20.334. The filing of the appeal does not stay the
13 effective date of the suspension, revocation, or denial. A petition
14 filed under this subsection must include the petitioner's grounds for
15 requesting review. Upon granting petitioner's request for review, the
16 court shall review the department's final order of suspension,
17 revocation, or denial as expeditiously as possible. If judicial relief
18 is sought for a stay or other temporary remedy from the department's
19 action, the court shall not grant such relief unless the court finds
20 that:

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

23 (b) Without relief the petitioner will suffer irreparable injury;
24 and

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

28 ~~((9))~~ (11) When it has been finally determined under the
29 procedures of this section that a nonresident's privilege to operate a
30 motor vehicle in this state has been suspended, revoked, or denied the
31 department shall give information in writing of the action taken to the
32 motor vehicle administrator of the state of the person's residence and
33 of any state in which he or she has a license.

34 NEW SECTION. Sec. 7. A new section is added to chapter 46.20 RCW
35 to read as follows:

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

1 (a) In the case of a person who has refused a test or tests:
2 (i) For a first refusal within five years preceding the date of
3 refusal, revocation or denial for one year;
4 (ii) For a second or subsequent refusal within five years preceding
5 the date of refusal, revocation or denial for two years.
6 (b) In the case of an incident where a person has submitted to or
7 been administered a test or tests indicating that the alcohol
8 concentration of the person's breath or blood was 0.10 or more:
9 (i) For a first incident within five years, where there has been no
10 previous conviction of RCW 46.61.502 or 46.61.504 within the five-year
11 period preceding the current incident, suspension or denial until the
12 person reaches age nineteen or for ninety days, whichever is longer;
13 (ii) For a second incident within five years, revocation or denial
14 for one year. A previous conviction under RCW 46.61.502 or 46.61.504
15 within the five-year period preceding the current incident, that did
16 not result in a suspension or denial under this subsection, shall be
17 considered a previous incident for purposes of this subsection;
18 (iii) For a third or subsequent incident within five years,
19 revocation or denial for two years. Previous convictions under RCW
20 46.61.502, 46.61.504, 46.61.520, or 46.61.522 within the five-year
21 period preceding the current incident, that did not result in a
22 suspension, revocation, or denial under this subsection, shall be
23 considered previous incidents for purposes of this subsection.
24 (2) A diagnostic evaluation and treatment recommendation shall be
25 prepared by an alcoholism agency approved by the department of social
26 and health services or a qualified probation department approved by the
27 department of social and health services. A copy of the report shall
28 be forwarded to the department of licensing. The department shall not
29 grant or reinstate a person's privilege to drive that has been
30 suspended, revoked, or denied under subsection (1) of this section
31 until it has determined the person's eligibility for licensing based
32 upon the report provided by an approved alcoholism agency or probation
33 department and shall deny reinstatement until enrollment and
34 participation in an approved program has been established and the
35 person is otherwise qualified.

36 **Sec. 8.** RCW 46.20.311 and 1990 c 250 s 45 are each amended to read
37 as follows:

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

14 (2) Any person whose license or privilege to drive a motor vehicle
15 on the public highways has been revoked, unless the revocation was for
16 a cause which has been removed, is not entitled to have the license or
17 privilege renewed or restored until: (a) After the expiration of one
18 year from the date the license or privilege to drive was revoked; (b)
19 after the expiration of the applicable revocation period provided by
20 RCW 46.61.515(3) (b) or (c); (c) after the expiration of two years for
21 persons convicted of vehicular homicide; (d) after the expiration of
22 one year in cases of revocation for the first refusal within five years
23 to submit to a chemical test under RCW 46.20.308; (e) after the
24 expiration of two years in cases of revocation for the second refusal
25 within five years to submit to a chemical test under RCW 46.20.308; or
26 (f) after the expiration of the applicable revocation period provided
27 by RCW 46.20.265. After the expiration of the appropriate period, the
28 person may make application for a new license as provided by law
29 together with a reissue fee in the amount of twenty dollars, but if the
30 revocation is the result of a violation of RCW 46.20.308, 46.61.502, or
31 46.61.504, the reissue fee shall be (~~fifty~~) one hundred dollars.
32 Except for a revocation under RCW 46.20.265, the department shall not
33 then issue a new license unless it is satisfied after investigation of
34 the driving ability of the person that it will be safe to grant the
35 privilege of driving a motor vehicle on the public highways, and until
36 the person gives and thereafter maintains proof of financial
37 responsibility for the future as provided in chapter 46.29 RCW. For a
38 revocation under RCW 46.20.265, the department shall not issue a new
39 license unless it is satisfied after investigation of the driving

1 ability of the person that it will be safe to grant that person the
2 privilege of driving a motor vehicle on the public highways.

3 (3) Whenever the driver's license of any person is suspended
4 pursuant to Article IV of the nonresident violators compact or RCW
5 46.23.020, the department shall not issue to the person any new or
6 renewal license until the person pays a reissue fee of twenty dollars.
7 If the suspension is the result of a violation of the laws of another
8 state, province, or other jurisdiction involving (a) the operation or
9 physical control of a motor vehicle upon the public highways while
10 under the influence of intoxicating liquor or drugs, or (b) the refusal
11 to submit to a chemical test or tests of the driver's breath or blood
12 alcohol content, the reissue fee shall be ~~((fifty))~~ one hundred
13 dollars.

14 **Sec. 9.** RCW 46.20.311 and 1993 c ... s 8 (section 8 of this act)
15 are each amended to read as follows:

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

35 (2) Any person whose license or privilege to drive a motor vehicle
36 on the public highways has been revoked, unless the revocation was for
37 a cause which has been removed, is not entitled to have the license or
38 privilege renewed or restored until: (a) After the expiration of one

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

27 (3) Whenever the driver's license of any person is suspended
28 pursuant to Article IV of the nonresident violators compact or RCW
29 46.23.020, the department shall not issue to the person any new or
30 renewal license until the person pays a reissue fee of twenty dollars.
31 If the suspension is the result of a violation of the laws of another
32 state, province, or other jurisdiction involving (a) the operation or
33 physical control of a motor vehicle upon the public highways while
34 under the influence of intoxicating liquor or drugs, or (b) the refusal
35 to submit to a chemical test or tests of the driver's breath or blood
36 alcohol content, the reissue fee shall be one hundred dollars.

37 **Sec. 10.** RCW 46.20.391 and 1985 c 407 s 5 are each amended to read
38 as follows:

1 (1) Any person licensed under this chapter whose driving privilege
2 has been suspended under section 7(1)(b)(i) of this act or who is
3 convicted of an offense relating to motor vehicles for which suspension
4 or revocation of the driver's license is mandatory, other than
5 vehicular homicide or vehicular assault, may submit to the department
6 an application for an occupational driver's license. The department,
7 upon receipt of the prescribed fee and upon determining that the
8 petitioner is engaged in an occupation or trade that makes it essential
9 that the petitioner operate a motor vehicle, may issue an occupational
10 driver's license and may set definite restrictions as provided in RCW
11 46.20.394. No person may petition for, and the department shall not
12 issue, an occupational driver's license that is effective during the
13 first thirty days of any suspension or revocation imposed under RCW
14 46.61.515 or section 7(1)(b)(i) of this act. A person aggrieved by the
15 decision of the department on the application for an occupational
16 driver's license may request a hearing as provided by rule of the
17 department.

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

20 (a) Within one year immediately preceding the present conviction or
21 administrative action, the applicant has not been convicted of any
22 offense relating to motor vehicles for which suspension or revocation
23 of a driver's license is mandatory; and

24 (b) Within five years immediately preceding the present conviction
25 or administrative action, the applicant has not been convicted of
26 driving or being in actual physical control of a motor vehicle while
27 under the influence of intoxicating liquor under RCW 46.61.502 or
28 46.61.504, of vehicular homicide under RCW 46.61.520, or of vehicular
29 assault under RCW 46.61.522, or had a license administratively
30 suspended or revoked under section 7(1)(b)(i) of this act; and

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

33 (d) The applicant files satisfactory proof of financial
34 responsibility pursuant to chapter 46.29 RCW, unless the suspension was
35 imposed under section 7(1)(b)(i) of this act.

36 (3) The director shall cancel an occupational driver's license upon
37 receipt of notice that the holder thereof has had a driver's license
38 administratively suspended or revoked under RCW 46.20.308 or has been
39 convicted of operating a motor vehicle in violation of its

1 restrictions, or of an offense that pursuant to chapter 46.20 RCW would
2 warrant suspension or revocation of a regular driver's license. The
3 cancellation is effective as of the date of the conviction, and
4 continues with the same force and effect as any suspension or
5 revocation under this title.

6 NEW SECTION. **Sec. 11.** A new section is added to chapter 46.20 RCW
7 to read as follows:

8 (1) Any person licensed under this chapter or any nonresident
9 granted the privilege of driving a motor vehicle on the highways of
10 this state, whose driver's license or driving privilege has been
11 suspended or revoked, other than for vehicular homicide, vehicular
12 assault, or under section 7(1)(a) of this act, or for a physical or
13 mental disability that would affect that person's ability to operate a
14 motor vehicle with safety upon the highways, may submit to the
15 department an application for a provisional driver's license for
16 purposes of participation in an alcohol or drug abuse treatment program
17 approved by the department of social and health services. The
18 department, upon receipt of the fee prescribed by this section and upon
19 determining that the applicant is engaged in a treatment program
20 approved by the department of social and health services that makes it
21 essential that the applicant operate a motor vehicle, may issue a
22 provisional driver's license. No person may petition for, and the
23 department shall not issue, a provisional driver's license that is
24 effective during the first thirty days of any suspension or revocation
25 imposed under RCW 46.61.515 or section 7 of this act.

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

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

30 (b) The applicant files satisfactory proof of financial
31 responsibility pursuant to chapter 46.29 RCW, unless the suspension was
32 imposed under section 7(1)(b)(i) of this act; and

33 (c) The applicant pays to the department a treatment assessment fee
34 of twenty-five dollars, such fee to be deposited in a special sober or
35 suspended account, within the department of social and health services,
36 to be administered by the division of alcohol and substance abuse, to
37 be used to pay the cost of the diagnostic evaluation or assessment

1 required under section 7(2) of this act for indigent or low-income
2 individuals.

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

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

27 **Sec. 12.** RCW 46.61.515 and 1985 c 352 s 1 are each amended to read
28 as follows:

29 (1) Every person who is convicted of a violation of RCW 46.61.502
30 or 46.61.504 shall be punished by imprisonment for not less than
31 twenty-four consecutive hours nor more than one year, and by a fine of
32 not less than two hundred fifty dollars and not more than one thousand
33 dollars. Unless the judge finds the person to be indigent, two hundred
34 fifty dollars of the fine shall not be suspended or deferred. Twenty-
35 four consecutive hours of the jail sentence shall not be suspended or
36 deferred unless the judge finds that the imposition of the jail
37 sentence will pose a risk to the defendant's physical or mental well-
38 being. Whenever the mandatory jail sentence is suspended or deferred,

1 the judge must state, in writing, the reason for granting the
2 suspension or deferral and the facts upon which the suspension or
3 deferral is based. The court may impose conditions of probation that
4 may include nonrepetition, alcohol or drug treatment, supervised
5 probation, or other conditions that may be appropriate. The convicted
6 person shall, in addition, be required to complete a course in an
7 alcohol information school approved by the department of social and
8 health services or more intensive treatment in a program approved by
9 the department of social and health services, as determined by the
10 court. A diagnostic evaluation and treatment recommendation shall be
11 prepared under the direction of the court by an alcoholism agency
12 approved by the department of social and health services or a qualified
13 probation department approved by the department of social and health
14 services. A copy of the report shall be forwarded to the department of
15 licensing. Based on the diagnostic evaluation, the court shall
16 determine whether the convicted person shall be required to complete a
17 course in an alcohol information school approved by the department of
18 social and health services or more intensive treatment in a program
19 approved by the department of social and health services. Standards
20 for approval for alcohol treatment programs shall be prescribed by rule
21 under the administrative procedure act, chapter 34.05 RCW. The courts
22 shall periodically review the costs of alcohol information schools and
23 treatment programs within their jurisdictions.

24 (2) On a second or subsequent conviction for driving or being in
25 physical control of a motor vehicle while under the influence of
26 intoxicating liquor or drugs within a five-year period a person shall
27 be punished by imprisonment for not less than seven days nor more than
28 one year and by a fine of not less than five hundred dollars and not
29 more than two thousand dollars. District courts and courts organized
30 under chapter 35.20 RCW are authorized to impose such fine. Unless the
31 judge finds the person to be indigent, five hundred dollars of the fine
32 shall not be suspended or deferred. The jail sentence shall not be
33 suspended or deferred unless the judge finds that the imposition of the
34 jail sentence will pose a risk to the defendant's physical or mental
35 well-being. Whenever the mandatory jail sentence is suspended or
36 deferred, the judge must state, in writing, the reason for granting the
37 suspension or deferral and the facts upon which the suspension or
38 deferral is based. If, at the time of a second or subsequent
39 conviction, the driver is without a license or permit because of a

1 previous suspension or revocation, the minimum mandatory sentence shall
2 be ninety days in jail and a two hundred dollar fine. The penalty so
3 imposed shall not be suspended or deferred. The person shall, in
4 addition, be required to complete a diagnostic evaluation by an
5 alcoholism agency approved by the department of social and health
6 services or a qualified probation department approved by the department
7 of social and health services. The report shall be forwarded to the
8 department of licensing. If the person is found to have an alcohol or
9 drug problem requiring treatment, the person shall complete treatment
10 at an approved alcoholism treatment facility or approved drug treatment
11 center.

12 In addition to any nonsuspendable and nondeferrable jail sentence
13 required by this subsection, the court shall sentence a person to a
14 term of imprisonment not exceeding one hundred eighty days and shall
15 suspend but shall not defer the sentence for a period not exceeding two
16 years. The suspension of the sentence may be conditioned upon
17 nonrepetition, alcohol or drug treatment, supervised probation, or
18 other conditions that may be appropriate. The sentence may be imposed
19 in whole or in part upon violation of a condition of suspension during
20 the suspension period.

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

25 (a) On the first conviction under either offense, where there has
26 been no previous suspension or denial imposed under section 7(1)(b) of
27 this act for the incident upon which the conviction is based, or where
28 there has been no previous incident resulting in a suspension,
29 revocation, or denial under section 7(1)(b) of this act within the
30 five-year period preceding the current conviction, be suspended by the
31 department until the person reaches age nineteen or for ninety days,
32 whichever is longer. The department of licensing shall determine the
33 person's eligibility for licensing based upon the reports provided by
34 the designated alcoholism agency, drug treatment center, or probation
35 department and shall deny reinstatement until enrollment and
36 participation in an approved program has been established and the
37 person is otherwise qualified;

38 (b) On a second conviction under either offense within a five-year
39 period, where there has been no previous revocation or denial imposed

1 under section 7(1)(b) of this act for the incident upon which the
2 conviction is based, be revoked by the department for one year. A
3 previous incident resulting in a suspension, revocation, or denial
4 under section 7(1)(b) of this act within the five-year period preceding
5 the current conviction shall be considered a previous conviction for
6 purposes of this subsection. The department of licensing shall
7 determine the person's eligibility for licensing based upon the reports
8 provided by the designated alcoholism agency, drug treatment center, or
9 probation department and shall deny reinstatement until satisfactory
10 progress in an approved program has been established and the person is
11 otherwise qualified;

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

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

29 **Sec. 13.** RCW 46.68.060 and 1969 c 99 s 11 are each amended to read
30 as follows:

31 (1) There is hereby created in the state treasury a fund to be
32 known as the highway safety fund to the credit of which shall be
33 deposited all moneys directed by law to be deposited therein. This
34 fund shall be used for carrying out the provisions of law relating to
35 driver licensing, driver improvement, financial responsibility, cost of
36 furnishing abstracts of driving records (~~and~~), maintaining (~~such~~)
37 the case records(~~, and~~) necessary to carry out the purposes set forth

1 in RCW 43.59.010, and as otherwise provided in subsection (2) of this
2 section.

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

8 NEW SECTION. Sec. 14. The traffic safety commission shall
9 undertake a study of the effectiveness of this act and shall report its
10 finding to the governor and the appropriate legislative committees
11 within thirty months of the effective date of this section.

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

16 NEW SECTION. Sec. 16. The department of licensing may adopt rules
17 necessary to carry out this act.

18 NEW SECTION. Sec. 17. Section 8 of this act is necessary for the
19 immediate preservation of the public peace, health, or safety, or
20 support of the state government and its existing public institutions,
21 and shall take effect immediately. Sections 2 through 7 and 9 through
22 16 of this act shall take effect July 1, 1994. The director of
23 licensing may immediately take such steps as are necessary to insure
24 that all sections of this act are implemented on their respective
25 effective dates."

26 **SSB 5341** - S AMD - 000324
27 By Senator Nelson

28

29 On page 1, line 2 of the title, after "drugs;" strike the remainder
30 of the title and insert "amending RCW 46.04.580, 46.20.308, 46.20.311,
31 46.20.311, 46.20.391, 46.61.515, and 46.68.060; adding a new section to
32 chapter 46.61 RCW; adding new sections to chapter 46.04 RCW; adding new

1 sections to chapter 46.20 RCW; creating new sections; prescribing
2 penalties; providing an effective date; and declaring an emergency."

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