
ENGROSSED SUBSTITUTE SENATE BILL 5341

State of Washington

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1993 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators A. Smith, Quigley, McCaslin, Vognild, Winsley, Deccio, von Reichbauer, M. Rasmussen, Roach and Oke)

Read first time 02/12/93.

1 AN ACT Relating to driving while under the influence of
2 intoxicating liquor or drugs; amending RCW 46.20.285, 46.04.580,
3 46.20.308, 46.20.311, 46.20.311, 46.20.391, 46.61.515, and 46.68.060;
4 adding a new section to chapter 46.61 RCW; adding new sections to
5 chapter 46.04 RCW; adding new sections to chapter 46.20 RCW; creating
6 new sections; prescribing penalties; providing an effective date; and
7 declaring an emergency.

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

9 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.61 RCW
10 to read as follows:

11 (1)(a) The court shall confiscate from every person who is
12 convicted of a second violation of RCW 46.61.502 or 46.61.504 within a
13 five-year period the Washington state vehicle registration and vehicle
14 license plates of the vehicle the person was driving at the time of the
15 violation, if the person is the owner of the vehicle, and if the person
16 is not the owner of the vehicle, the court shall confiscate the
17 Washington state vehicle registration and vehicle license plates of a
18 vehicle owned by the person, if any. The person shall have seven days

1 to surrender the Washington state vehicle registration and vehicle
2 license plates.

3 (b) The Washington state vehicle registration and vehicle license
4 plates shall be held for a period of ninety days from the date of
5 surrender.

6 (c) The court shall immediately notify the department of licensing
7 of the confiscation and the duration of the confiscation. No Washington
8 state vehicle registration or vehicle license plates may be issued by
9 the department to the person during the period of confiscation.

10 (d) No confiscation under this section affects the right of any
11 person to transfer or acquire title in the vehicle, or the right of any
12 person other than the arrested driver to become the registered owner of
13 the vehicle.

14 (e) In any case provided for in this section, where a Washington
15 state vehicle registration or vehicle license is to be confiscated, the
16 confiscation shall be stayed and shall not take effect until after the
17 determination of any appeal from the conviction which may lawfully be
18 taken, but in case the conviction is sustained on appeal the
19 confiscation takes effect as of the date that the conviction becomes
20 effective for other purposes.

21 (2)(a) On a third or subsequent conviction for a violation of RCW
22 46.61.502 or 46.61.504 within a five-year period the motor vehicle the
23 person was driving at the time of the violation, if the person is the
24 owner of the vehicle, shall be seized by a law enforcement officer of
25 this state upon process issued by the court issuing the conviction.

26 (b) Proceedings for forfeiture shall be deemed commenced by the
27 seizure. The law enforcement agency under whose authority the seizure
28 was made shall cause notice to be served within fifteen days following
29 the seizure on the owner of the vehicle seized and the person in charge
30 thereof and any person having any known right or interest therein,
31 including any community property interest, of the seizure and intended
32 forfeiture of the seized vehicle. The notice of seizure may be served
33 by any method authorized by law or court rule including but not limited
34 to service by certified mail with return receipt requested. Service by
35 mail shall be deemed complete upon mailing within the fifteen-day
36 period following the seizure.

37 (c) If no person notifies the seizing law enforcement agency in
38 writing of the person's claim of ownership or right to possession of

1 the vehicle within forty-five days of the seizure, the vehicle seized
2 shall be deemed forfeited.

3 (d) If any person notifies the seizing law enforcement agency in
4 writing of the person's claim of ownership or right to possession of
5 the vehicle within forty-five days of the seizure, the person or
6 persons shall be afforded a reasonable opportunity to be heard as to
7 the claim or right. The hearing shall be before the chief law
8 enforcement officer of the seizing agency or the chief law enforcement
9 officer's designee, except where the seizing agency is a state agency
10 as defined in RCW 34.12.020(4), the hearing shall be before the chief
11 law enforcement officer of the seizing agency or an administrative law
12 judge appointed under chapter 34.12 RCW, except that any person
13 asserting a claim or right may remove the matter to a court of
14 competent jurisdiction if the value of the vehicle involved is more
15 than five hundred dollars. The court to which the matter is to be
16 removed shall be the district court when the value of the vehicle is
17 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
18 before the seizing agency and any appeal therefrom shall be under Title
19 34 RCW. In a court hearing between two or more claimants to the
20 vehicle, the prevailing party shall be entitled to a judgment for costs
21 and reasonable attorneys' fees. The burden of producing evidence shall
22 be upon the person claiming to be the lawful owner or the person
23 claiming to have the lawful right to possession of the vehicle. The
24 seizing law enforcement agency shall promptly return the vehicle to the
25 claimant upon a determination by the administrative law judge or court
26 that the claimant is the present lawful owner or is lawfully entitled
27 to possession thereof.

28 (e) When a vehicle is forfeited under this chapter the seizing law
29 enforcement agency may:

30 (i) Retain it for official use or upon application by any law
31 enforcement agency of this state release such vehicle to such agency
32 for the exclusive use of enforcing the provisions of this chapter;

33 (ii) Sell the vehicle; or

34 (iii) Remove it for disposition in accordance with law.

35 (f)(i) When a vehicle is forfeited, the seizing agency shall keep
36 a record indicating the identity of the prior owner, if known, a
37 description of the vehicle, the disposition of the vehicle, the value
38 of the vehicle at the time of seizure, and the amount of proceeds
39 realized from disposition of the vehicle.

1 (ii) Each seizing agency shall retain records of forfeited vehicles
2 for at least seven years.

3 (iii) Each seizing agency shall file a report including a copy of
4 the records of forfeited vehicles with the state treasurer each
5 calendar quarter.

6 (iv) The quarterly report need not include a record of forfeited
7 vehicles that are still being held for use as evidence during the
8 investigation or prosecution of a case or during the appeal from a
9 conviction.

10 (g) Forfeited vehicles and net proceeds shall be retained by the
11 seizing law enforcement agency exclusively for the expansion and
12 improvement of law enforcement activity. Money retained under this
13 section may not be used to supplant preexisting funding sources.

14 (h) A forfeiture of a motor vehicle encumbered by a bona fide
15 security interest is subject to the interest of the secured party.

16 **Sec. 2.** RCW 46.20.285 and 1990 c 250 s 43 are each amended to read
17 as follows:

18 The department shall forthwith revoke the license of any driver for
19 the period of one calendar year unless otherwise provided in this
20 section, upon receiving a record of the driver's conviction of any of
21 the following offenses, when the conviction has become final:

22 (1) For vehicular homicide the period of revocation shall be two
23 years;

24 (2) Vehicular assault;

25 (3) Driving a motor vehicle while under the influence of
26 intoxicating liquor or a narcotic drug, or under the influence of any
27 other drug to a degree which renders the driver incapable of safely
28 driving a motor vehicle, upon a showing by the department's records
29 that the conviction is the second such conviction for the driver within
30 a period of five years. Upon a showing that the conviction is the
31 third such conviction for the driver within a period of five years, the
32 period of revocation shall be two years;

33 (4) Any felony in the commission of which a motor vehicle is used;

34 (5) Failure to stop and give information or render aid as required
35 under the laws of this state in the event of a motor vehicle accident
36 resulting in the death or personal injury of another or resulting in
37 damage to a vehicle that is driven or attended by another;

1 (6) Perjury or the making of a false affidavit or statement under
2 oath to the department under Title 46 RCW or under any other law
3 relating to the ownership or operation of motor vehicles;

4 (7) Reckless driving upon a showing by the department's records
5 that the conviction is the third such conviction for the driver within
6 a period of two years;

7 (8) A felony violation of chapter 69.50 RCW. Upon a showing that
8 the conviction is the second such conviction within a period of five
9 years, the period of revocation shall be two years.

10 NEW SECTION. Sec. 3. The purpose of sections 3 through 17 of this
11 act is:

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

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

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

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

24 NEW SECTION. Sec. 5. A new section is added to chapter 46.04 RCW
25 to read as follows:

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

1 **Sec. 6.** RCW 46.04.580 and 1990 c 250 s 22 are each amended to read
2 as follows:

3 "Suspend," in all its forms, means invalidation for any period less
4 than one calendar year and thereafter until reinstatement. However,
5 under RCW 46.61.515 and section 8 of this act the invalidation may last
6 for more than one calendar year.

7 **Sec. 7.** RCW 46.20.308 and 1989 c 337 s 8 are each amended to read
8 as follows:

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

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

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

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

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

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

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

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

1 mail it must be postmarked within ten days after the notice has been
2 given;

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

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

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

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

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

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

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

1 sustained at a hearing pursuant to subsection (8) of this section,
2 whichever occurs first.

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

10 (8) Upon timely receipt of ((such)) a request for a formal hearing,
11 the department shall afford the person an opportunity for a hearing as
12 provided in RCW 46.20.329 and 46.20.332. The hearing shall be
13 conducted in the county of the arrest, except that all or part of the
14 hearing may, at the discretion of the department, be conducted by
15 telephone or other electronic means. For the purposes of this section,
16 the scope of ~~((such))~~ the hearing shall cover the issues of whether a
17 law enforcement officer had reasonable grounds to believe the person
18 had been driving or was in actual physical control of a motor vehicle
19 within this state while under the influence of intoxicating liquor,
20 whether the person was placed under arrest, and whether (a) the person
21 refused to submit to the test or tests upon request of the officer
22 after having been informed that such refusal would result in the
23 revocation of the person's privilege to drive or, (b) if a test was
24 administered, whether the applicable requirements of this section were
25 satisfied before the administration of the test or tests, whether the
26 person submitted to the test or tests, or whether a test was
27 administered without express consent as permitted under this section,
28 and whether the test or tests indicated that the alcohol concentration
29 of the person's breath or blood was 0.10 or more. The sworn report
30 submitted by a law enforcement officer shall be prima facie evidence
31 that the officer had reasonable grounds to believe the person had been
32 driving or was in actual physical control of a motor vehicle within
33 this state while under the influence of intoxicating liquor, that the
34 officer complied with the requirements of this section, and that the
35 testing instrument was in proper working condition. ((The department
36 shall order that the revocation either be rescinded or sustained. Any
37 decision by the department revoking a person's driving privilege shall
38 be stayed and shall not take effect while a formal hearing is pending
39 as provided in this section or during the pendency of a subsequent

1 ~~appeal to superior court so long as there is no conviction for a moving~~
2 ~~violation or no finding that the person has committed a traffic~~
3 ~~infraction that is a moving violation during pendency of the hearing~~
4 ~~and appeal.~~

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

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

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

25 (b) Without relief the petitioner will suffer irreparable injury;
26 and

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

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

36 NEW SECTION. Sec. 8. A new section is added to chapter 46.20 RCW
37 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) The department shall stay the suspension, revocation, or denial
28 action pursuant to this section against any person, for whom it
29 receives evidence of a court order for deferred prosecution, in
30 accordance with chapter 10.05 RCW. The stay shall remain in effect for
31 the term of the order: PROVIDED, That the department shall remove the
32 stay upon receipt of evidence of new charges in violation of RCW
33 46.20.308 or that the terms of the deferred prosecution order have been
34 violated.

35 (3) A diagnostic evaluation and treatment recommendation shall be
36 prepared by an alcoholism agency approved by the department of social
37 and health services or a qualified probation department approved by the
38 department of social and health services. A copy of the report shall
39 be forwarded to the department of licensing. The department shall not

1 grant or reinstate a person's privilege to drive that has been
2 suspended, revoked, or denied under subsection (1) of this section
3 until it has determined the person's eligibility for licensing based
4 upon the report provided by an approved alcoholism agency or probation
5 department and shall deny reinstatement until enrollment and
6 participation in an approved program has been established and the
7 person is otherwise qualified.

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

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

23 (2) Any person whose license or privilege to drive a motor vehicle
24 on the public highways has been revoked, unless the revocation was for
25 a cause which has been removed, is not entitled to have the license or
26 privilege renewed or restored until: (a) After the expiration of one
27 year from the date the license or privilege to drive was revoked; (b)
28 after the expiration of the applicable revocation period provided by
29 RCW 46.61.515(3) (b) or (c); (c) after the expiration of two years for
30 persons convicted of vehicular homicide; (d) after the expiration of
31 one year in cases of revocation for the first refusal within five years
32 to submit to a chemical test under RCW 46.20.308; (e) after the
33 expiration of two years in cases of revocation for the second refusal
34 within five years to submit to a chemical test under RCW 46.20.308; or
35 (f) after the expiration of the applicable revocation period provided
36 by RCW 46.20.265. After the expiration of the appropriate period, the
37 person may make application for a new license as provided by law
38 together with a reissue fee in the amount of twenty dollars, but if the

1 revocation is the result of a violation of RCW 46.20.308, 46.61.502, or
2 46.61.504, the reissue fee shall be (~~fifty~~) one hundred dollars.
3 Except for a revocation under RCW 46.20.265, the department shall not
4 then issue a new license unless it is satisfied after investigation of
5 the driving ability of the person that it will be safe to grant the
6 privilege of driving a motor vehicle on the public highways, and until
7 the person gives and thereafter maintains proof of financial
8 responsibility for the future as provided in chapter 46.29 RCW. For a
9 revocation under RCW 46.20.265, the department shall not issue a new
10 license unless it is satisfied after investigation of the driving
11 ability of the person that it will be safe to grant that person the
12 privilege of driving a motor vehicle on the public highways.

13 (3) Whenever the driver's license of any person is suspended
14 pursuant to Article IV of the nonresident violators compact or RCW
15 46.23.020, the department shall not issue to the person any new or
16 renewal license until the person pays a reissue fee of twenty dollars.
17 If the suspension is the result of a violation of the laws of another
18 state, province, or other jurisdiction involving (a) the operation or
19 physical control of a motor vehicle upon the public highways while
20 under the influence of intoxicating liquor or drugs, or (b) the refusal
21 to submit to a chemical test or tests of the driver's breath or blood
22 alcohol content, the reissue fee shall be (~~fifty~~) one hundred
23 dollars.

24 **Sec. 10.** RCW 46.20.311 and 1993 c ... s 9 (section 9 of this act)
25 are each amended to read as follows:

26 (1) The department shall not suspend a driver's license or
27 privilege to drive a motor vehicle on the public highways for a fixed
28 period of more than one year, except as permitted under RCW 46.20.342
29 (~~or~~), 46.61.515, or section 8 of this act. Except for a suspension
30 under section 8(1)(b)(i) of this act, whenever the license or driving
31 privilege of any person is suspended by reason of a conviction, a
32 finding that a traffic infraction has been committed, pursuant to
33 chapter 46.29 RCW, or pursuant to RCW 46.20.291 (~~or 46.20.308~~), the
34 suspension shall remain in effect until the person gives and thereafter
35 maintains proof of financial responsibility for the future as provided
36 in chapter 46.29 RCW. The department shall not issue to the person a
37 new, duplicate, or renewal license until the person pays a reissue fee
38 of twenty dollars. If the suspension is the result of a violation of

1 RCW 46.61.502 or 46.61.504 or was imposed under RCW 46.20.308, the
2 reissue fee shall be one hundred dollars. If the suspension was
3 imposed under section 8(1)(b)(i) of this act, the suspension shall
4 remain in effect and the department shall not issue any new, duplicate,
5 or renewal license until the person pays a reinstatement fee of one
6 hundred dollars.

7 (2) Any person whose license or privilege to drive a motor vehicle
8 on the public highways has been revoked, unless the revocation was for
9 a cause which has been removed, is not entitled to have the license or
10 privilege renewed or restored until: (a) After the expiration of one
11 year from the date the license or privilege to drive was revoked; (b)
12 after the expiration of the applicable revocation period provided by
13 RCW 46.61.515(3) (b) or (c); (c) after the expiration of two years for
14 persons convicted of vehicular homicide; (d) after the expiration of
15 ~~((one year in cases of revocation for the first refusal within five~~
16 ~~years to submit to a chemical test under RCW 46.20.308; (e) after the~~
17 ~~expiration of two years in cases of revocation for the second refusal~~
18 ~~within five years to submit to a chemical test under RCW 46.20.308; or~~
19 ~~(f))~~ the applicable revocation period provided by section 8 of this
20 act; or (e) after the expiration of the applicable revocation period
21 provided by RCW 46.20.265. After the expiration of the appropriate
22 period, the person may make application for a new license as provided
23 by law together with a reissue fee in the amount of twenty dollars, but
24 if the revocation is the result of a violation of RCW 46.20.308,
25 46.61.502, or 46.61.504 or was imposed under RCW 46.20.308, the reissue
26 fee shall be one hundred dollars. Except for a revocation under RCW
27 46.20.265, the department shall not then issue a new license unless it
28 is satisfied after investigation of the driving ability of the person
29 that it will be safe to grant the privilege of driving a motor vehicle
30 on the public highways, and until the person gives and thereafter
31 maintains proof of financial responsibility for the future as provided
32 in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the
33 department shall not issue a new license unless it is satisfied after
34 investigation of the driving ability of the person that it will be safe
35 to grant that person the privilege of driving a motor vehicle on the
36 public highways.

37 (3) Whenever the driver's license of any person is suspended
38 pursuant to Article IV of the nonresident violators compact or RCW
39 46.23.020, the department shall not issue to the person any new or

1 renewal license until the person pays a reissue fee of twenty dollars.
2 If the suspension is the result of a violation of the laws of another
3 state, province, or other jurisdiction involving (a) the operation or
4 physical control of a motor vehicle upon the public highways while
5 under the influence of intoxicating liquor or drugs, or (b) the refusal
6 to submit to a chemical test or tests of the driver's breath or blood
7 alcohol content, the reissue fee shall be one hundred dollars.

8 **Sec. 11.** RCW 46.20.391 and 1985 c 407 s 5 are each amended to read
9 as follows:

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

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

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

33 (b) Within five years immediately preceding the present conviction
34 or administrative action, the applicant has not been convicted of
35 driving or being in actual physical control of a motor vehicle while
36 under the influence of intoxicating liquor under RCW 46.61.502 or
37 46.61.504, of vehicular homicide under RCW 46.61.520, or of vehicular

1 assault under RCW 46.61.522, or had a license administratively
2 suspended or revoked under section 8(1)(b)(i) of this act; and

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

5 (d) The applicant files satisfactory proof of financial
6 responsibility pursuant to chapter 46.29 RCW, unless the suspension was
7 imposed under section 8(1)(b)(i) of this act.

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

17 NEW SECTION. Sec. 12. A new section is added to chapter 46.20 RCW
18 to read as follows:

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

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

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

3 (b) The applicant files satisfactory proof of financial
4 responsibility pursuant to chapter 46.29 RCW, unless the suspension was
5 imposed under section 8(1)(b)(i) of this act; and

6 (c) The applicant pays to the department a treatment assessment fee
7 of twenty-five dollars, such fee to be deposited in a special sober or
8 suspended account, within the department of social and health services,
9 to be administered by the division of alcohol and substance abuse, to
10 be used to pay the cost of the diagnostic evaluation or assessment
11 required under section 8(2) of this act for indigent or low-income
12 individuals.

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

27 (4) The department shall cancel a provisional driver's license upon
28 receipt of notice that the holder thereof has been convicted of
29 operating a motor vehicle in violation of its restrictions, or of an
30 offense that pursuant to this chapter would warrant suspension or
31 revocation of a regular driver's license, or upon the recommendation of
32 a treatment agency for nonparticipation in a treatment program. The
33 cancellation is effective as of the date of the conviction, or the date
34 a recommendation is accepted from a treatment agency, and continues
35 with the same force and effect as any suspension or revocation under
36 this title.

37 **Sec. 13.** RCW 46.61.515 and 1985 c 352 s 1 are each amended to read
38 as follows:

1 (1) Every person who is convicted of a violation of RCW 46.61.502
2 or 46.61.504 shall be punished by imprisonment for not less than
3 twenty-four consecutive hours nor more than one year, and by a fine of
4 not less than two hundred fifty dollars and not more than one thousand
5 dollars. Unless the judge finds the person to be indigent, two hundred
6 fifty dollars of the fine shall not be suspended or deferred. Twenty-
7 four consecutive hours of the jail sentence shall not be suspended or
8 deferred unless the judge finds that the imposition of the jail
9 sentence will pose a risk to the defendant's physical or mental well-
10 being. Whenever the mandatory jail sentence is suspended or deferred,
11 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. The court may impose conditions of probation that
14 may include nonrepetition, alcohol or drug treatment, supervised
15 probation, or other conditions that may be appropriate. The convicted
16 person shall, in addition, be required to complete a course in an
17 alcohol information school approved by the department of social and
18 health services or more intensive treatment in a program approved by
19 the department of social and health services, as determined by the
20 court. A diagnostic evaluation and treatment recommendation shall be
21 prepared under the direction of the court by an alcoholism agency
22 approved by the department of social and health services or a qualified
23 probation department approved by the department of social and health
24 services. A copy of the report shall be forwarded to the department of
25 licensing. Based on the diagnostic evaluation, the court shall
26 determine whether the convicted person shall be required to complete a
27 course in an alcohol information school approved by the department of
28 social and health services or more intensive treatment in a program
29 approved by the department of social and health services. Standards
30 for approval for alcohol treatment programs shall be prescribed by rule
31 under the administrative procedure act, chapter 34.05 RCW. The courts
32 shall periodically review the costs of alcohol information schools and
33 treatment programs within their jurisdictions.

34 (2) On a second or subsequent conviction for driving or being in
35 physical control of a motor vehicle while under the influence of
36 intoxicating liquor or drugs within a five-year period a person shall
37 be punished by imprisonment for not less than seven days nor more than
38 one year and by a fine of not less than five hundred dollars and not
39 more than two thousand dollars. District courts and courts organized

1 under chapter 35.20 RCW are authorized to impose such fine. Unless the
2 judge finds the person to be indigent, five hundred dollars of the fine
3 shall not be suspended or deferred. The jail sentence shall not be
4 suspended or deferred unless the judge finds that the imposition of the
5 jail sentence will pose a risk to the defendant's physical or mental
6 well-being. Whenever the mandatory jail sentence is suspended or
7 deferred, the judge must state, in writing, the reason for granting the
8 suspension or deferral and the facts upon which the suspension or
9 deferral is based. If, at the time of a second or subsequent
10 conviction, the driver is without a license or permit because of a
11 previous suspension or revocation, the minimum mandatory sentence shall
12 be ninety days in jail and a two hundred dollar fine. The penalty so
13 imposed shall not be suspended or deferred. The person shall, in
14 addition, be required to complete a diagnostic evaluation by an
15 alcoholism agency approved by the department of social and health
16 services or a qualified probation department approved by the department
17 of social and health services. The report shall be forwarded to the
18 department of licensing. If the person is found to have an alcohol or
19 drug problem requiring treatment, the person shall complete treatment
20 at an approved alcoholism treatment facility or approved drug treatment
21 center.

22 In addition to any nonsuspendable and nondeferrable jail sentence
23 required by this subsection, the court shall sentence a person to a
24 term of imprisonment not exceeding one hundred eighty days and shall
25 suspend but shall not defer the sentence for a period not exceeding two
26 years. The suspension of the sentence may be conditioned upon
27 nonrepetition, alcohol or drug treatment, supervised probation, or
28 other conditions that may be appropriate. The sentence may be imposed
29 in whole or in part upon violation of a condition of suspension during
30 the suspension period.

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

35 (a) On the first conviction under either offense, where there has
36 been no previous suspension or denial imposed under section 8(1)(b) of
37 this act for the incident upon which the conviction is based, or where
38 there has been no previous incident resulting in a suspension,
39 revocation, or denial under section 8(1)(b) of this act within the

1 five-year period preceding the current conviction, be suspended by the
2 department until the person reaches age nineteen or for ninety days,
3 whichever is longer. The department of licensing shall determine the
4 person's eligibility for licensing based upon the reports provided by
5 the designated alcoholism agency, drug treatment center, 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 (b) On a second conviction under either offense within a five-year
10 period, where there has been no previous revocation or denial imposed
11 under section 8(1)(b) of this act for the incident upon which the
12 conviction is based, be revoked by the department for one year. A
13 previous incident resulting in a suspension, revocation, or denial
14 under section 8(1)(b) of this act within the five-year period preceding
15 the current conviction shall be considered a previous conviction for
16 purposes of this subsection. The department of licensing shall
17 determine the person's eligibility for licensing based upon the reports
18 provided by the designated alcoholism agency, drug treatment center, or
19 probation department and shall deny reinstatement until satisfactory
20 progress in an approved program has been established and the person is
21 otherwise qualified;

22 (c) On a third or subsequent conviction of driving or being in
23 physical control of a motor vehicle while under the influence of
24 intoxicating liquor or drugs, vehicular homicide, or vehicular assault,
25 or any combination thereof within a five-year period, where there has
26 been no previous revocation or denial imposed under section 8(1)(b) of
27 this act for the incident upon which the conviction is based, be
28 revoked by the department for two years. Previous incidents resulting
29 in suspension, revocation, or denial under section 8(1)(b) of this act
30 within the five-year period preceding the current conviction shall be
31 considered previous convictions for purposes of this subsection.

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

1 **Sec. 14.** RCW 46.68.060 and 1969 c 99 s 11 are each amended to read
2 as follows:

3 (1) There is hereby created in the state treasury a fund to be
4 known as the highway safety fund to the credit of which shall be
5 deposited all moneys directed by law to be deposited therein. This
6 fund shall be used for carrying out the provisions of law relating to
7 driver licensing, driver improvement, financial responsibility, cost of
8 furnishing abstracts of driving records (~~(and)~~), maintaining (~~(such)~~)
9 the case records(~~(, and)~~) necessary to carry out the purposes set forth
10 in RCW 43.59.010, and as otherwise provided in subsection (2) of this
11 section.

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

17 NEW SECTION. **Sec. 15.** The traffic safety commission shall
18 undertake a study of the effectiveness of this act and shall report its
19 finding to the governor and the appropriate legislative committees
20 within thirty months of the effective date of this section.

21 NEW SECTION. **Sec. 16.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

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

27 NEW SECTION. **Sec. 18.** Section 9 of this act is necessary for the
28 immediate preservation of the public peace, health, or safety, or
29 support of the state government and its existing public institutions,
30 and shall take effect immediately. Sections 3 through 8 and 10 through
31 17 of this act shall take effect July 1, 1994. The director of
32 licensing may immediately take such steps as are necessary to insure
33 that all sections of this act are implemented on their respective
34 effective dates.

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