

HOUSE BILL REPORT

SB 5245

As Passed House
April 15, 1993

Title: An act relating to the time limitation on the analysis of blood and breath alcohol.

Brief Description: Regulating the analysis of blood and breath alcohol.

Sponsors: Senators A. Smith, Quigley, Roach and Winsley; by request of Washington State Patrol.

Brief History:

Reported by House Committee on:
Judiciary, March 23, 1993, DPA;
Passed House - Amended, April 15, 1993, 92-4.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 15 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Long; Mastin; H. Myers; Riley; Schmidt; Scott; Tate; and Wineberry.

Minority Report: Do not pass. Signed by 1 member: Representative Johanson.

Staff: Patricia Shelledy (786-7149).

Background: A person is guilty of driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person drives or is in actual physical control of a vehicle while the person has 0.10 grams or more of alcohol per 210 liters of breath or 0.10 percent or more by weight of alcohol in the person's blood.

Blood and breath analyses that show an alcohol concentration of less than 0.10 may be considered as evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

Prosecutions for driving under the influence of intoxicating liquors or drugs can be time-consuming, because the state

must establish by expert testimony the alcohol concentration of the person when the person drove the vehicle. This expert testimony is based on analyses of blood or breath samples taken after the alleged offense. No time limit exists for obtaining blood or breath samples for analysis of the level of alcohol or drugs in the person's system.

Summary of Bill: A person is guilty of driving or having physical control of a motor vehicle while under the influence of an intoxicating liquor or drug if the person drives or has physical control of a motor vehicle and has an alcohol concentration of 0.10 or more within two hours of the alleged offense.

An affirmative defense is available that quantities of alcohol sufficient to cause an alcohol concentration of 0.10 or more were consumed after the defendant drove or was in physical control of a vehicle, but before the blood or breath sample was taken.

Samples taken after two hours of the alleged driving or physical control may be used as evidence that within two hours of the driving or physical control the person's alcohol concentration exceeded the legal limit and may also be used as evidence that the person was under the influence of alcohol while driving or being in physical control of a motor vehicle.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Breath or blood alcohol concentration tests are performed sometime after the alleged offense. The state must show, by expert testimony, the alcohol concentration at the time of the alleged offense by extrapolation. This requires technicians to testify in court proceedings, taking them away from their jobs. Research has shown that alcohol concentrations do not increase between the time of the offense and the time of testing.

Testimony Against: Alcohol absorption varies from person to person based on many factors. The bill assumes that alcohol has been completely absorbed at the time of the offense, which may not be true in some cases. Scientific evidence on this issue is not yet clear. The need for technicians in court proceedings will not be alleviated, since technicians will still be needed to establish the accuracy of the test.

Witnesses: Captain Tim Erickson, Washington State Patrol (pro); Sergeant Rod Gullberg, Washington State Patrol (pro);

Barry Logan, Washington State Toxicologist (pro); Steve Hayne, attorney (con); Dr. Hlstala, professor, University of Washington Medical School (con); and Ken Fornabai, attorney (con).