

CERTIFICATION OF ENROLLMENT

SENATE BILL 5245

53rd Legislature
1993 Regular Session

Passed by the Senate April 20, 1993
YEAS 45 NAYS 0

President of the Senate

Passed by the House April 15, 1993
YEAS 92 NAYS 4

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5245** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SENATE BILL 5245

AS AMENDED BY THE HOUSE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

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

Read first time 01/19/93. Referred to Committee on Law & Justice.

1 AN ACT Relating to the time limitation on the analysis of blood and
2 breath alcohol; and amending RCW 46.61.502 and 46.61.504.

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

4 **Sec. 1.** RCW 46.61.502 and 1987 c 373 s 2 are each amended to read
5 as follows:

6 (1) A person is guilty of driving while under the influence of
7 intoxicating liquor or any drug if the person drives a vehicle within
8 this state (~~(while)~~):

9 ~~((1))~~ (a) And the person has 0.10 grams or more of alcohol per
10 two hundred ten liters of breath within two hours after driving, as
11 shown by analysis of the person's breath made under RCW 46.61.506; or

12 ~~((2))~~ (b) And the person has 0.10 percent or more by weight of
13 alcohol in the person's blood within two hours after driving, as shown
14 by analysis of the person's blood made under RCW 46.61.506; or

15 ~~((3))~~ (c) While the person is under the influence of or affected
16 by intoxicating liquor or any drug; or

17 ~~((4))~~ (d) While the person is under the combined influence of or
18 affected by intoxicating liquor and any drug.

1 (2) The fact that any person charged with a violation of this
2 section is or has been entitled to use such drug under the laws of this
3 state shall not constitute a defense against any charge of violating
4 this section.

5 (3) It is an affirmative defense to a violation of subsection (1)
6 (a) and (b) of this section which the defendant must prove by a
7 preponderance of the evidence that the defendant consumed a sufficient
8 quantity of alcohol after the time of driving and before the
9 administration of an analysis of the person's breath or blood to cause
10 the defendant's alcohol concentration to be 0.10 or more within two
11 hours after driving. The court shall not admit evidence of this
12 defense unless the defendant notifies the prosecution prior to the
13 omnibus or pretrial hearing in the case of the defendant's intent to
14 assert the affirmative defense.

15 (4) Analyses of blood or breath samples obtained more than two
16 hours after the alleged driving may be used as evidence that within two
17 hours of the alleged driving, a person had 0.10 grams or more of
18 alcohol per two hundred ten liters of breath or 0.10 percent or more of
19 alcohol in the person's blood, pursuant to subsection (1) (a) and (b)
20 of this section, and may be used as evidence that a person was under
21 the influence of or affected by intoxicating liquors or any drug
22 pursuant to subsection (1) (c) and (d) of this section.

23 **Sec. 2.** RCW 46.61.504 and 1987 c 373 s 3 are each amended to read
24 as follows:

25 (1) A person is guilty of being in actual physical control of a
26 motor vehicle while under the influence of intoxicating liquor or any
27 drug if the person has actual physical control of a vehicle within this
28 state ((while)):

29 ((+1)) (a) And the person has 0.10 grams or more of alcohol per
30 two hundred ten liters of breath within two hours after being in actual
31 physical control of a motor vehicle, as shown by analysis of the
32 person's breath made under RCW 46.61.506; or

33 ((+2)) (b) And the person has 0.10 percent or more by weight of
34 alcohol in the person's blood within two hours after being in actual
35 physical control of a motor vehicle, as shown by analysis of the
36 person's blood made under RCW 46.61.506; or

37 ((+3)) (c) While the person is under the influence of or affected
38 by intoxicating liquor or any drug; or

1 (~~(4)~~) (d) While the person is under the combined influence of or
2 affected by intoxicating liquor and any drug.

3 (2) The fact that any person charged with a violation of this
4 section is or has been entitled to use such drug under the laws of this
5 state shall not constitute a defense against any charge of violating
6 this section. No person may be convicted under this section if, prior
7 to being pursued by a law enforcement officer, the person has moved the
8 vehicle safely off the roadway.

9 (3) It is an affirmative defense to a violation of subsection (1)
10 (a) and (b) of this section which the defendant must prove by a
11 preponderance of the evidence that the defendant consumed a sufficient
12 quantity of alcohol after the time of being in actual physical control
13 of a motor vehicle and before the administration of an analysis of the
14 person's breath or blood to cause the defendant's alcohol concentration
15 to be 0.10 or more within two hours after being in actual physical
16 control of a motor vehicle. The court shall not admit evidence of this
17 defense unless the defendant notifies the prosecution prior to the
18 omnibus or pretrial hearing in the case of the defendant's intent to
19 assert the affirmative defense.

20 (4) Analyses of blood or breath samples obtained more than two
21 hours after the alleged actual physical control of a motor vehicle may
22 be used as evidence that within two hours of the alleged actual
23 physical control of a motor vehicle, a person had 0.10 grams or more of
24 alcohol per two hundred ten liters of breath or 0.10 percent or more of
25 alcohol in the person's blood, pursuant to subsection (1) (a) and (b)
26 of this section, and may be used as evidence that a person was under
27 the influence of or affected by intoxicating liquors or any drug
28 pursuant to subsection (1) (c) and (d) of this section.

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