
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-2803.1/95

ATTY/TYPIST: KT:as

BRIEF TITLE:

2 **SSB 5141** - H COMM AMD
3 By Committee on Law & Justice

4

5 Strike everything after the enacting clause and insert the
6 following:

7 **"PART I - IMPLIED CONSENT AND ADMINISTRATIVE REVOCATION**

8 **Sec. 1.** RCW 46.20.308 and 1994 c 275 s 13 are each amended to read
9 as follows:

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

19 (b) A person under the age of twenty-one who drives or is in
20 physical control of a motor vehicle within this state is deemed to have
21 given consent, subject to the relevant portions of RCW 46.61.506, to be
22 detained long enough, and be transported if necessary, to take a test
23 or tests of that person's blood or breath for the purpose of
24 determining the alcohol concentration in his or her system if requested
25 or signaled to stop by a law enforcement officer pursuant to RCW
26 46.20.309 (as recodified by this act) where, at the time of the stop,
27 the officer has reasonable grounds to believe the person is under the
28 age of twenty-one and had been driving or was in actual physical
29 control of a motor vehicle while having alcohol in a concentration of
30 0.02 or more in his or her system.

31 (2) The test or tests of breath shall be administered at the
32 direction of a law enforcement officer having reasonable grounds to
33 believe the person to have been driving or in actual physical control
34 of a motor vehicle within this state while under the influence of
35 intoxicating liquor or the person to have been driving or in actual

1 physical control of a motor vehicle while having alcohol in a
2 concentration of 0.02 or more in his or her system and being under the
3 age of twenty-one. However, in those instances where(~~(a)~~) the
4 person is incapable due to physical injury, physical incapacity, or
5 other physical limitation, of providing a breath sample(~~(or (b) as a~~
6 result of a traffic accident)) or where the person is being treated
7 ((for a medical condition)) in a hospital, clinic, doctor's office,
8 emergency medical vehicle, ambulance, or other similar facility in
9 which a breath testing instrument is not present or where the officer
10 has reasonable grounds to believe that the person is under the
11 influence of a drug, a blood test shall be administered by a qualified
12 person as provided in RCW 46.61.506(4). The officer shall inform the
13 person of his or her right to refuse the breath or blood test, and of
14 his or her right to have additional tests administered by any qualified
15 person of his or her choosing as provided in RCW 46.61.506. The
16 officer shall warn the driver that:

17 (a) His or her license, permit, or privilege to drive will be
18 revoked or denied if he or she refuses to submit to the test(~~(, and (b)~~
19 that));

20 (b) His or her license, permit, or privilege to drive will be
21 suspended, revoked, denied, or placed in probationary status and the
22 person will be subject to possible criminal penalties if the test is
23 administered and the test indicates the alcohol concentration of the
24 person's breath or blood is 0.10 or more, in the case of a person age
25 twenty-one or over, or 0.02 in the case of a person under age twenty-
26 one; and

27 (c) His or her refusal to take the test may be used in a criminal
28 trial.

29 (3) Except as provided in this section, the test administered shall
30 be of the breath only. If an individual is unconscious or is under
31 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
32 or vehicular assault as provided in RCW 46.61.522, or if an individual
33 is under arrest for the crime of driving while under the influence of
34 intoxicating liquor or drugs as provided in RCW 46.61.502 or is under
35 detention for driving with alcohol in his or her system as provided in
36 RCW 46.20.309 (as recodified by this act), which arrest or detention
37 results from an accident in which there has been serious bodily injury
38 to another person (~~has been injured and there is a reasonable~~
39 likelihood that such other person may die as a result of injuries

1 ~~sustained in the accident~~)), a breath or blood test may be administered
2 without the consent of the individual so arrested or detained.

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

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

15 (6) If, after arrest or detention and after the other applicable
16 conditions and requirements of this section have been satisfied, a test
17 or tests of the person's blood or breath is administered and the test
18 results indicate that the alcohol concentration of the person's breath
19 or blood is 0.10 or more if the person is age twenty-one or over, or is
20 0.02 or more if the person is under the age of twenty-one, or the
21 person refuses to submit to a test, the arresting officer or other law
22 enforcement officer at whose direction any test has been given, or the
23 department, where applicable, if the arrest or detention results in a
24 test of the person's blood, shall:

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

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

36 (c) Mark the person's Washington state driver's license or permit
37 to drive, if any, in a manner authorized by the department;

38 (d) Serve notice in writing that the marked license or permit, if
39 any, is a temporary license that is valid for sixty days from the date

1 of arrest or detention or from the date notice has been given in the
2 event notice is given by the department following a blood test, or
3 until the suspension, revocation, or denial of the person's license,
4 permit, or privilege to drive is sustained at a hearing pursuant to
5 subsection (8) of this section, whichever occurs first. No temporary
6 license is valid to any greater degree than the license or permit that
7 it replaces; and

8 (e) Immediately notify the department of the arrest or detention
9 and transmit to the department within seventy-two hours, except as
10 delayed as the result of a blood test, a sworn report or report under
11 a declaration authorized by RCW 9A.72.085 that states:

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

16 (ii) That after receipt of the warnings required by subsection (2)
17 of this section the person refused to submit to a test of his or her
18 blood or breath, or a test was administered and the results indicated
19 that the alcohol concentration of the person's breath or blood was 0.10
20 or more if the person is age twenty-one or over, or was 0.02 or more if
21 the person is under the age of twenty-one; and

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

23 (7) The department of licensing, upon the receipt of a sworn report
24 ((of the law enforcement officer that the officer had reasonable
25 grounds to believe the arrested person had been driving or was in
26 actual physical control of a motor vehicle within this state while
27 under the influence of intoxicating liquor and that the person had
28 refused to submit to the test or tests upon the request of the law
29 enforcement officer after being informed that refusal would result in
30 the revocation of the person's privilege to drive)) or report under a
31 declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this
32 section, shall suspend, revoke, deny, or place in probationary status
33 the person's license ((or)), permit, or privilege to drive or any
34 nonresident operating privilege, as provided in section 3 of this act,
35 such suspension, revocation, denial, or placement in probationary
36 status to be effective beginning sixty days from the date of arrest or
37 detention or from the date notice has been given in the event notice is
38 given by the department following a blood test, or when sustained at a

1 hearing pursuant to subsection (8) of this section, whichever occurs
2 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. The~~
10 ~~person shall pay a fee of one hundred dollars as part of the request.))~~

11 (8) Upon timely receipt of ((such)) a request ((and such fee)) for
12 a formal hearing, the department shall afford the person an opportunity
13 for a hearing ((as provided in)). Except as otherwise provided in this
14 section, the hearing is subject to and shall be scheduled and conducted
15 in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be
16 conducted in the county of the arrest or detention, except that all or
17 part of the hearing may, at the discretion of the department, be
18 conducted by telephone or other electronic means. The hearing shall be
19 held within sixty days following the arrest or detention or following
20 the date notice has been given in the event notice is given by the
21 department following a blood test, unless otherwise agreed to by the
22 department and the person, in which case the action by the department
23 shall be stayed, and any valid temporary license marked under
24 subsection (6)(c) of this section extended, if the person is otherwise
25 eligible for licensing. For the purposes of this section, the scope of
26 ((such)) the hearing shall cover the issues of whether a law
27 enforcement officer had reasonable grounds to believe the person had
28 been driving or was in actual physical control of a motor vehicle
29 within this state while under the influence of intoxicating liquor or
30 any drug or had been driving or was in actual physical control of a
31 motor vehicle within this state while having alcohol in his or her
32 system and was under the age of twenty-one, whether the person was
33 placed under arrest, and (a) whether the person refused to submit to
34 the test or tests upon request of the officer after having been
35 informed that such refusal would result in the revocation of the
36 person's license, permit, or privilege to drive, or (b) if a test or
37 tests were administered, whether the applicable requirements of this
38 section were satisfied before the administration of the test or tests,
39 whether the person submitted to the test or tests, or whether a test

1 was administered without express consent as permitted under this
2 section, and whether the test or tests indicated that the alcohol
3 concentration of the person's breath or blood was 0.10 or more if the
4 person was age twenty-one or over at the time of the arrest, or was
5 0.02 or more if the person was under the age of twenty-one at the time
6 of the arrest or detention. The sworn report or report under a
7 declaration authorized by RCW 9A.72.085 submitted by a law enforcement
8 officer is prima facie evidence that the officer had reasonable grounds
9 to believe the person had been driving or was in actual physical
10 control of a motor vehicle within this state while under the influence
11 of intoxicating liquor or drugs, or both, or the person had been
12 driving or was in actual physical control of a motor vehicle within
13 this state while having alcohol in his or her system and was under the
14 age of twenty-one and that the officer complied with the requirements
15 of this section.

16 A hearing officer shall conduct the hearing, may issue subpoenas
17 for the attendance of witnesses and the production of documents, and
18 shall administer oaths to witnesses. The hearing officer shall not
19 issue a subpoena for the attendance of a witness at the request of the
20 person unless the request is accompanied by the fee required by RCW
21 5.56.010 for a witness in district court. The sworn report or report
22 under a declaration authorized by RCW 9A.72.085 of the law enforcement
23 officer and any other evidence accompanying the report shall be
24 admissible without further evidentiary foundation and the
25 certifications authorized by the criminal rules for courts of limited
26 jurisdiction shall be admissible without further evidentiary
27 foundation. The person may be represented by counsel, may question
28 witnesses, may present evidence, and may testify. The department shall
29 order that the suspension, revocation, denial, or placement in
30 probationary status either be rescinded or sustained. ((Any decision
31 by the department revoking a person's driving privilege shall be stayed
32 and shall not take effect while a formal hearing is pending as provided
33 in this section or during the pendency of a subsequent appeal to
34 superior court so long as there is no conviction for a moving violation
35 or no finding that the person has committed a traffic infraction that
36 is a moving violation during pendency of the hearing and appeal.

37 (+8)) (9) If the suspension, revocation, denial, or placement in
38 probationary status is sustained after such a hearing, the person whose
39 license, privilege, or permit is suspended, revoked, denied, or placed

1 in probationary status has the right to file a petition in the superior
2 court of the county of arrest or detention to review the final order of
3 revocation by the department in the same manner ((provided in RCW
4 46.20.334)) as an appeal from a decision of a court of limited
5 jurisdiction. The appellant must pay the costs associated with
6 obtaining the record of the hearing before the hearing officer plus an
7 additional one hundred dollars to the department. The filing of the
8 appeal does not stay the effective date of the suspension, revocation,
9 denial, or placement in probationary status. A petition filed under
10 this subsection must include the petitioner's grounds for requesting
11 review. Upon granting petitioner's request for review, the court shall
12 review the department's final order of suspension, revocation, denial,
13 or placement in probationary status as expeditiously as possible. If
14 judicial relief is sought for a stay or other temporary remedy from the
15 department's action, the court shall not grant such relief unless the
16 court finds that the appellant is likely to prevail in the appeal and
17 that without a stay the appellant will suffer irreparable injury. If
18 the court stays the suspension, revocation, denial, or placement in
19 probationary status it may impose conditions on such stay.

20 (10) If a person whose driver's license, permit, or privilege to
21 drive has been or will be suspended, revoked, denied, or placed in
22 probationary status under subsection (7) of this section, other than as
23 a result of a breath test refusal, and who has not committed an offense
24 within the last five years for which he or she was granted a deferred
25 prosecution under chapter 10.05 RCW, petitions a court for a deferred
26 prosecution on criminal charges arising out of the arrest for which
27 action has been or will be taken under subsection (7) of this section,
28 the court may direct the department to stay any actual or proposed
29 suspension, revocation, denial, or placement in probationary status for
30 at least forty-five days but not more than ninety days. If the court
31 stays the suspension, revocation, denial, or placement in probationary
32 status, it may impose conditions on such stay. If the person is
33 otherwise eligible for licensing, the department shall issue a
34 temporary license, or extend any valid temporary license marked under
35 subsection (6) of this section, for the period of the stay. If a
36 deferred prosecution treatment plan is not recommended in the report
37 made under RCW 10.05.050, or if treatment is rejected by the court, or
38 if the person declines to accept an offered treatment plan, or if the
39 person violates any condition imposed by the court, then the court

1 shall immediately direct the department to cancel the stay and any
2 temporary marked license or extension of a temporary license issued
3 under this subsection.

4 A suspension, revocation, or denial imposed under this section,
5 other than as a result of a breath test refusal, shall be stayed if the
6 person is accepted for deferred prosecution as provided in chapter
7 10.05 RCW for the incident upon which the suspension, revocation, or
8 denial is based. If the deferred prosecution is terminated, the stay
9 shall be lifted and the suspension, revocation, or denial reinstated.
10 If the deferred prosecution is completed, the stay shall be lifted and
11 the suspension, revocation, or denial canceled.

12 ~~((9))~~ (11) When it has been finally determined under the
13 procedures of this section that a nonresident's privilege to operate a
14 motor vehicle in this state has been suspended, revoked, or denied, the
15 department shall give information in writing of the action taken to the
16 motor vehicle administrator of the state of the person's residence and
17 of any state in which he or she has a license.

18 **Sec. 2.** RCW 46.20.309 and 1994 c 275 s 10 are each amended to read
19 as follows:

20 ~~((1))~~ Notwithstanding any other provision of this title, a person
21 under the age of twenty-one may not drive, operate, or be in physical
22 control of a motor vehicle while having alcohol in his or her system in
23 a concentration of 0.02 or above.

24 ~~((2) A person under the age of twenty one who drives or is in~~
25 ~~physical control of a motor vehicle within this state is deemed to have~~
26 ~~given consent, subject to the relevant portions of RCW 46.61.506, to be~~
27 ~~detained long enough, and be transported if necessary, to take a test~~
28 ~~or tests of that person's blood or breath for the purpose of~~
29 ~~determining the alcohol concentration in his or her system.~~

30 ~~(3) A test or tests may be administered at the direction of a law~~
31 ~~enforcement officer, who after stopping or detaining the driver, has~~
32 ~~reasonable grounds to believe that the driver was driving or in actual~~
33 ~~physical control of a motor vehicle while having alcohol in his or her~~
34 ~~system.~~

35 ~~(4) The law enforcement officer requesting the test or tests under~~
36 ~~subsection (2) of this section shall warn the person requested to~~
37 ~~submit to the test that a refusal to submit will result in that~~
38 ~~person's driver's license or driving privilege being revoked.~~

1 ~~(5) If the person refuses testing, or submits to a test that~~
2 ~~discloses an alcohol concentration of 0.02 or more, the law enforcement~~
3 ~~officer shall:~~

4 ~~(a) Serve the person notice in writing on behalf of the department~~
5 ~~of licensing of its intention to suspend, revoke, or deny the person's~~
6 ~~license, permit, or privilege to drive;~~

7 ~~(b) Serve the person notice in writing on behalf of the department~~
8 ~~of licensing of the person's right to a hearing, specifying the steps~~
9 ~~required to obtain a hearing;~~

10 ~~(c) Confiscate the person's Washington state license or permit to~~
11 ~~drive, if any, and issue a temporary license to replace any confiscated~~
12 ~~license or permit. The temporary license shall be valid for thirty~~
13 ~~days from the date of the traffic stop or until the suspension or~~
14 ~~revocation of the person's license or permit is sustained at a hearing~~
15 ~~as provided by subsection (7) of this section, whichever occurs first.~~
16 ~~No temporary license is valid to any greater degree than the license or~~
17 ~~permit it replaces;~~

18 ~~(d) Notify the department of licensing of the traffic stop, and~~
19 ~~transmit to the department any confiscated license or permit and a~~
20 ~~sworn report stating:~~

21 ~~(i) That the officer had reasonable grounds to believe the person~~
22 ~~was driving or in actual physical control of a motor vehicle within~~
23 ~~this state with alcohol in his or her system;~~

24 ~~(ii) That pursuant to this section a test of the person's alcohol~~
25 ~~concentration was administered or that the person refused to be tested;~~

26 ~~(iii) If administered, that the test indicated the person's alcohol~~
27 ~~concentration was 0.02 or higher; and~~

28 ~~(iv) Any other information that the department may require by rule.~~

29 ~~(6) Upon receipt of the sworn report of a law enforcement officer~~
30 ~~under subsection (5) of this section, the department shall suspend or~~
31 ~~revoke the driver's license or driving privilege beginning thirty days~~
32 ~~from the date of the traffic stop or beginning when the suspension,~~
33 ~~revocation, or denial is sustained at a hearing as provided by~~
34 ~~subsection (7) of this section. Within fifteen days after notice of a~~
35 ~~suspension or revocation has been given, the person may, in writing,~~
36 ~~request a formal hearing. If such a request is not made within the~~
37 ~~prescribed time the right to a hearing is waived. Upon receipt of such~~
38 ~~request, the department shall afford the person an opportunity for a~~
39 ~~hearing as provided in RCW 46.20.329 and 46.20.332. The hearing shall~~

1 be conducted in the county of the arrest. For the purposes of this
2 section, the hearing shall cover the issues of whether a law
3 enforcement officer had reasonable grounds to believe the person had
4 been driving or was in actual physical control of a motor vehicle
5 within this state while having alcohol in his or her system, whether
6 the person refused to submit to the test or tests upon request of the
7 officer after having been informed that the refusal would result in the
8 revocation of the person's driver's license or driving privilege, and,
9 if the test or tests of the person's breath or blood was administered,
10 whether the results indicated an alcohol concentration of 0.02 or more.
11 The department shall order that the suspension or revocation of the
12 person's driver's license or driving privilege either be rescinded or
13 sustained. Any decision by the department suspending or revoking a
14 person's driver's license or driving privilege is stayed and does not
15 take effect while a formal hearing is pending under this section or
16 during the pendency of a subsequent appeal to superior court so long as
17 there is no conviction for a moving violation or no finding that the
18 person has committed a traffic infraction that is a moving violation
19 during the pendency of the hearing and appeal. If the suspension or
20 revocation of the person's driver's license or driving privilege is
21 sustained after the hearing, the person may file a petition in the
22 superior court of the county of arrest to review the final order of
23 suspension or revocation by the department in the manner provided in
24 RCW 46.20.334.

25 (7) The department shall suspend or revoke the driver's license or
26 driving privilege of a person as required by this section as follows:

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

28 (i) For a first refusal within five years, revocation for one year;

29 (ii) For a second or subsequent refusal within five years,
30 revocation or denial for two years.

31 (b) In the case of an incident where a person has submitted to a
32 test or tests indicating an alcohol concentration of 0.02 or more:

33 (i) For a first incident within five years, suspension for ninety
34 days;

35 (ii) For a second or subsequent incident within five years,
36 revocation for one year or until the person reaches age twenty-one
37 whichever occurs later.

1 ~~(8) For purposes of this section, "alcohol concentration" means (a)~~
2 ~~grams of alcohol per two hundred ten liters of a person's breath, or~~
3 ~~(b) the percent by weight of alcohol in a person's blood.)~~

4 NEW SECTION. Sec. 3. A new section is added to chapter 46.20 RCW
5 to read as follows:

6 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
7 deny the arrested or detained person's license, permit, or privilege to
8 drive as follows:

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

10 (a) For a first refusal within five years, where there has not been
11 a previous incident within five years that resulted in administrative
12 action under this section, revocation or denial for one year;

13 (b) For a second or subsequent refusal within five years, or for a
14 first refusal where there has been one or more previous incidents
15 within five years that have resulted in administrative action under
16 this section, revocation or denial for two years or until the person
17 reaches age twenty-one, whichever is longer. A revocation imposed
18 under this subsection (1)(b) shall run consecutively to the period of
19 any suspension, revocation, or denial imposed pursuant to a criminal
20 conviction arising out of the same incident.

21 (2) In the case of an incident where a person has submitted to or
22 been administered a test or tests indicating that the alcohol
23 concentration of the person's breath or blood was 0.10 or more:

24 (a) For a first incident within five years, where there has not
25 been a previous incident within five years that resulted in
26 administrative action under this section, placement in probationary
27 status as provided in RCW 46.20.355;

28 (b) For a second or subsequent incident within five years,
29 revocation or denial for two years.

30 (3) In the case of an incident where a person under age twenty-one
31 has submitted to or been administered a test or tests indicating that
32 the alcohol concentration of the person's breath or blood was more than
33 0.02:

34 (a) For a first incident within five years, suspension or denial
35 for ninety days;

36 (b) For a second or subsequent incident within five years,
37 revocation or denial for one year or until the person reaches age
38 twenty-one, whichever is longer.

1 **Sec. 4.** RCW 46.20.355 and 1994 c 275 s 8 are each amended to read
2 as follows:

3 (1) ~~Upon ((notification of a conviction under RCW 46.61.502 or~~
4 ~~46.61.504 for which the issuance of a probationary driver's license is~~
5 ~~required)) receipt of a sworn report or report under a declaration~~
6 authorized by RCW 9A.72.085 under RCW 46.20.308, or upon receipt of an
7 abstract indicating a deferred prosecution has been granted under RCW
8 10.05.060, the department of licensing shall order the person to
9 surrender ((his or her)) any Washington state driver's license that may
10 be in his or her possession. The department shall revoke the license,
11 permit, or privilege to drive of any person who fails to surrender it
12 as required by this section for one year, unless the license has been
13 previously surrendered to the department, a law enforcement officer, or
14 a court, or the person has completed an affidavit of lost, stolen,
15 destroyed, or previously surrendered license, such revocation to take
16 effect thirty days after notice is given of the requirement for license
17 surrender.

18 (2) ~~((Upon receipt of the surrendered license, and following the~~
19 ~~expiration of any period of license suspension or revocation, or~~
20 ~~following receipt of a sworn statement under RCW 46.20.365 that~~
21 ~~requires issuance of a probationary license, the department shall issue~~
22 ~~the person a probationary license if otherwise qualified. The~~
23 ~~probationary license shall be renewed on the same cycle as the person's~~
24 ~~regular license would have been renewed until five years after the date~~
25 ~~of its issuance.)) The department shall place a person's driving
26 privilege in probationary status as required by RCW 10.05.060 or
27 46.20.308 for a period of five years from the date the probationary
28 status is required to go into effect.~~

29 (3) Following receipt of an abstract indicating a deferred
30 prosecution has been granted under RCW 10.05.060, or following receipt
31 of a sworn report under RCW 46.20.308 that requires immediate placement
32 in probationary status under section 3(2)(a) of this act, the
33 department shall require the person to obtain a probationary license in
34 order to operate a motor vehicle in the state of Washington, except as
35 otherwise exempt under RCW 46.20.025. The department shall not issue
36 the probationary license unless the person is otherwise qualified for
37 licensing, and the person must renew the probationary license on the
38 same cycle as the person's regular license would have been renewed

1 until the expiration of the five-year probationary status period
2 imposed under subsection (2) of this section.

3 (4) For each original issue or ((reissue)) renewal of a
4 probationary license under this section, the department ((may)) shall
5 charge ((the)) a fee ((authorized under RCW 46.20.311 for the
6 reissuance of a license following a revocation for a violation of RCW
7 46.61.502 or 46.61.504)) of fifty dollars in addition to any other
8 licensing fees required. Except for when renewing a probationary
9 license, the department shall waive the fifty-dollar fee if the person
10 has a probationary license in his or her possession at the time a new
11 probationary license is required.

12 ((+4)) (5) A probationary license shall enable the department and
13 law enforcement personnel to determine that the person is on
14 probationary status((, including the period of that status, for a
15 violation of RCW 46.61.502 or 46.61.504 or 46.20.365)). ((That)) The
16 fact that a person's driving privilege is in probationary status or
17 that the person has been issued a probationary license shall not be a
18 part of the person's record that is available to insurance companies.

19 **PART II - CRIMINAL SANCTIONS**

20 NEW SECTION. Sec. 5. A new section is added to chapter 46.61 RCW,
21 to be codified between RCW 46.61.500 and 46.61.520, to read as follows:

22 (1) A person who is convicted of a violation of RCW 46.61.502 or
23 46.61.504 and who has no prior offense within five years shall be
24 punished as follows:

25 (a) In the case of a person whose alcohol concentration was less
26 than 0.15, or for whom for reasons other than the person's refusal to
27 take a test offered pursuant to RCW 46.20.308 there is no test result
28 indicating the person's alcohol concentration:

29 (i) By imprisonment for not less than one day nor more than one
30 year. Twenty-four consecutive hours of the imprisonment may not be
31 suspended or deferred unless the court finds that the imposition of
32 this mandatory minimum sentence would impose a substantial risk to the
33 offender's physical or mental well-being. Whenever the mandatory
34 minimum sentence is suspended or deferred, the court shall state in
35 writing the reason for granting the suspension or deferral and the
36 facts upon which the suspension or deferral is based; and

1 (ii) By a fine of not less than three hundred fifty dollars nor
2 more than five thousand dollars. Three hundred fifty dollars of the
3 fine may not be suspended or deferred unless the court finds the
4 offender to be indigent; and

5 (iii) By suspension of the offender's license or permit to drive,
6 or suspension of any nonresident privilege to drive, for a period of
7 ninety days. The court may suspend all or part of the ninety-day
8 period of suspension. The court shall notify the department of
9 licensing of the conviction and of any period of license, permit, or
10 privilege suspension and shall notify the department of the person's
11 completion of any such period of suspension; or

12 (b) In the case of a person whose alcohol concentration was at
13 least 0.15, or for whom by reason of the person's refusal to take a
14 test offered pursuant to RCW 46.20.308 there is no test result
15 indicating the person's alcohol concentration:

16 (i) By imprisonment for not less than two days nor more than one
17 year. Two consecutive days of the imprisonment may not be suspended or
18 deferred unless the court finds that the imposition of this mandatory
19 minimum sentence would impose a substantial risk to the offender's
20 physical or mental well-being. Whenever the mandatory minimum sentence
21 is suspended or deferred, the court shall state in writing the reason
22 for granting the suspension or deferral and the facts upon which the
23 suspension or deferral is based; and

24 (ii) By a fine of not less than five hundred dollars nor more than
25 five thousand dollars. Five hundred dollars of the fine may not be
26 suspended or deferred unless the court finds the offender to be
27 indigent; and

28 (iii) By suspension of the offender's license or permit to drive,
29 or suspension of any nonresident privilege to drive, for a period of
30 one hundred twenty days. The period of license, permit, or privilege
31 suspension may not be suspended. The court shall notify the department
32 of licensing of the conviction, and upon receiving notification of the
33 conviction the department shall suspend the offender's license, permit,
34 or privilege.

35 (2) A person who is convicted of a violation of RCW 46.61.502 or
36 46.61.504 and who has one prior offense within five years shall be
37 punished as follows:

38 (a) In the case of a person whose alcohol concentration was less
39 than 0.15, or for whom for reasons other than the person's refusal to

1 take a test offered pursuant to RCW 46.20.308 there is no test result
2 indicating the person's alcohol concentration:

3 (i) By imprisonment for not less than seven days nor more than one
4 year. Seven days of the imprisonment may not be suspended or deferred
5 unless the court finds that the imposition of this mandatory minimum
6 sentence would impose a substantial risk to the offender's physical or
7 mental well-being. Whenever the mandatory minimum sentence is
8 suspended or deferred, the court shall state in writing the reason for
9 granting the suspension or deferral and the facts upon which the
10 suspension or deferral is based; and

11 (ii) By a fine of not less than five hundred dollars nor more than
12 five thousand dollars. Five hundred dollars of the fine may not be
13 suspended or deferred unless the court finds the offender to be
14 indigent; and

15 (iii) By revocation of the offender's license or permit to drive,
16 or suspension of any nonresident privilege to drive, for a period of
17 one year. The period of license, permit, or privilege revocation may
18 not be suspended. The court shall notify the department of licensing
19 of the conviction, and upon receiving notification of the conviction
20 the department shall revoke the offender's license, permit, or
21 privilege; or

22 (b) In the case of a person whose alcohol concentration was at
23 least 0.15, or for whom by reason of the person's refusal to take a
24 test offered pursuant to RCW 46.20.308 there is no test result
25 indicating the person's alcohol concentration:

26 (i) By imprisonment for not less than ten days nor more than one
27 year. Ten days of the imprisonment may not be suspended or deferred
28 unless the court finds that the imposition of this mandatory minimum
29 sentence would impose a substantial risk to the offender's physical or
30 mental well-being. Whenever the mandatory minimum sentence is
31 suspended or deferred, the court shall state in writing the reason for
32 granting the suspension or deferral and the facts upon which the
33 suspension or deferral is based; and

34 (ii) By a fine of not less than seven hundred fifty dollars nor
35 more than five thousand dollars. Seven hundred fifty dollars of the
36 fine may not be suspended or deferred unless the court finds the
37 offender to be indigent; and

38 (iii) By revocation of the offender's license or permit to drive,
39 or suspension of any nonresident privilege to drive, for a period of

1 four hundred fifty days. The period of license, permit, or privilege
2 revocation may not be suspended. The court shall notify the department
3 of licensing of the conviction, and upon receiving notification of the
4 conviction the department shall revoke the offender's license, permit,
5 or privilege.

6 (3) A person who is convicted of a violation of RCW 46.61.502 or
7 46.61.504 and who has two or more prior offenses within five years
8 shall be punished as follows:

9 (a) In the case of a person whose alcohol concentration was less
10 than 0.15, or for whom for reasons other than the person's refusal to
11 take a test offered pursuant to RCW 46.20.308 there is no test result
12 indicating the person's alcohol concentration:

13 (i) By imprisonment for not less than ninety days nor more than one
14 year. Ninety days of the imprisonment may not be suspended or deferred
15 unless the court finds that the imposition of this mandatory minimum
16 sentence would impose a substantial risk to the offender's physical or
17 mental well-being. Whenever the mandatory minimum sentence is
18 suspended or deferred, the court shall state in writing the reason for
19 granting the suspension or deferral and the facts upon which the
20 suspension or deferral is based; and

21 (ii) By a fine of not less than one thousand dollars nor more than
22 five thousand dollars. One thousand dollars of the fine may not be
23 suspended or deferred unless the court finds the offender to be
24 indigent; and

25 (iii) By revocation of the offender's license or permit to drive,
26 or suspension of any nonresident privilege to drive, for a period of
27 two years. The period of license, permit, or privilege revocation may
28 not be suspended. The court shall notify the department of licensing
29 of the conviction, and upon receiving notification of the conviction
30 the department shall revoke the offender's license, permit, or
31 privilege; or

32 (b) In the case of a person whose alcohol concentration was at
33 least 0.15, or for whom by reason of the person's refusal to take a
34 test offered pursuant to RCW 46.20.308 there is no test result
35 indicating the person's alcohol concentration:

36 (i) By imprisonment for not less than one hundred twenty days nor
37 more than one year. One hundred twenty days of the imprisonment may
38 not be suspended or deferred unless the court finds that the imposition
39 of this mandatory minimum sentence would impose a substantial risk to

1 the offender's physical or mental well-being. Whenever the mandatory
2 minimum sentence is suspended or deferred, the court shall state in
3 writing the reason for granting the suspension or deferral and the
4 facts upon which the suspension or deferral is based; and

5 (ii) By a fine of not less than one thousand five hundred dollars
6 nor more than five thousand dollars. One thousand five hundred dollars
7 of the fine may not be suspended or deferred unless the court finds the
8 offender to be indigent; and

9 (iii) By revocation of the offender's license or permit to drive,
10 or suspension of any nonresident privilege to drive, for a period of
11 three years. The period of license, permit, or privilege revocation
12 may not be suspended. The court shall notify the department of
13 licensing of the conviction, and upon receiving notification of the
14 conviction the department shall revoke the offender's license, permit,
15 or privilege.

16 (4) In exercising its discretion in setting penalties within the
17 limits allowed by this section, the court shall particularly consider
18 whether the person's driving at the time of the offense was responsible
19 for injury or damage to another or another's property.

20 (5) An offender punishable under this section is subject to the
21 alcohol assessment and treatment provisions of RCW 46.61.5056.

22 (6)(a) In addition to any nonsuspendable and nondeferrable jail
23 sentence required by this section, whenever the court imposes less than
24 one year in jail, the court shall also suspend but shall not defer a
25 period of confinement for a period not exceeding two years. The court
26 shall impose conditions of probation that include: (i) Not driving a
27 motor vehicle within this state without a valid license to drive and
28 proof of financial responsibility for the future; (ii) not driving a
29 motor vehicle within this state while having an alcohol concentration
30 of 0.08 or more within two hours after driving; and (iii) not refusing
31 to submit to a test of his or her breath or blood to determine alcohol
32 concentration upon request of a law enforcement officer who has
33 reasonable grounds to believe the person was driving or was in actual
34 physical control of a motor vehicle within this state while under the
35 influence of intoxicating liquor. The court may impose conditions of
36 probation that include nonrepetition, alcohol or drug treatment,
37 supervised probation, or other conditions that may be appropriate. The
38 sentence may be imposed in whole or in part upon violation of a
39 condition of probation during the suspension period.

1 (b) For each violation of mandatory conditions of probation under
2 (a) (i) and (ii) or (a) (i) and (iii) of this subsection, the court
3 shall order the convicted person to be confined for thirty days, which
4 shall not be suspended or deferred.

5 (c) For each incident involving a violation of a mandatory
6 condition of probation imposed under this subsection, the license,
7 permit, or privilege to drive of the person shall be suspended by the
8 court for thirty days or, if such license, permit, or privilege to
9 drive already is suspended, revoked, or denied at the time the finding
10 of probation violation is made, the suspension, revocation, or denial
11 then in effect shall be extended by thirty days. The court shall
12 notify the department of any suspension, revocation, or denial or any
13 extension of a suspension, revocation, or denial imposed under this
14 subsection.

15 (7)(a) A "prior offense" means any of the following:

16 (i) A conviction for a violation of RCW 46.61.502 or an equivalent
17 local ordinance;

18 (ii) A conviction for a violation of RCW 46.61.504 or an equivalent
19 local ordinance;

20 (iii) A conviction for a violation of RCW 46.61.520 committed while
21 under the influence of intoxicating liquor or any drug;

22 (iv) A conviction for a violation of RCW 46.61.522 committed while
23 under the influence of intoxicating liquor or any drug;

24 (v) An out-of-state conviction for a violation that would have been
25 a violation of (a)(i), (ii), (iii), or (iv) of this subsection if
26 committed in this state; or

27 (vi) A deferred prosecution under chapter 10.05 RCW granted in a
28 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
29 equivalent local ordinance.

30 (b) "Within five years" means that the arrest for a prior offense
31 occurred within five years of the arrest for the current offense.

32 **Sec. 6.** RCW 46.61.5058 and 1994 c 139 s 1 are each amended to read
33 as follows:

34 (1) Upon the arrest of a person or upon the filing of a complaint,
35 citation, or information in a court of competent jurisdiction, based
36 upon probable cause to believe that a person has violated RCW 46.61.502
37 or 46.61.504 or any similar municipal ordinance, if such person has a
38 (~~previous conviction for violation of either RCW 46.61.502 or~~

1 ~~46.61.504 or other similar municipal ordinance, and where the offense~~
2 ~~occurs within a five year period of the previous conviction))~~ prior
3 offense within five years as defined in section 5 of this act, and
4 where the person has been provided written notice that any transfer,
5 sale, or encumbrance of such person's interest in the vehicle over
6 which that person was actually driving or had physical control when the
7 violation occurred, is unlawful pending either acquittal, dismissal,
8 sixty days after conviction, or other termination of the charge, such
9 person shall be prohibited from encumbering, selling, or transferring
10 his or her interest in such vehicle, except as otherwise provided in
11 (a), (b), and (c) of this subsection, until either acquittal,
12 dismissal, sixty days after conviction, or other termination of the
13 charge. The prohibition against transfer of title shall not be stayed
14 pending the determination of an appeal from the conviction.

15 (a) A vehicle encumbered by a bona fide security interest may be
16 transferred to the secured party or to a person designated by the
17 secured party;

18 (b) A leased or rented vehicle may be transferred to the lessor,
19 rental agency, or to a person designated by the lessor or rental
20 agency; and

21 (c) A vehicle may be transferred to a third party or a vehicle
22 dealer who is a bona fide purchaser or may be subject to a bona fide
23 security interest in the vehicle unless it is established that (i) in
24 the case of a purchase by a third party or vehicle dealer, such party
25 or dealer had actual notice that the vehicle was subject to the
26 prohibition prior to the purchase, or (ii) in the case of a security
27 interest, the holder of the security interest had actual notice that
28 the vehicle was subject to the prohibition prior to the encumbrance of
29 title.

30 (2) On ~~((a second or subsequent))~~ conviction for a violation of
31 either RCW 46.61.502 or 46.61.504 or any similar municipal ordinance
32 where ~~((such offense was committed within a five year period of the~~
33 ~~previous conviction))~~ the person convicted has a prior offense within
34 five years as defined in section 5 of this act, the motor vehicle the
35 person was driving or over which the person had actual physical control
36 at the time of the offense, if the person has a financial interest in
37 the vehicle, is subject to seizure and forfeiture pursuant to this
38 section.

1 (3) A vehicle subject to forfeiture under this chapter may be
2 seized by a law enforcement officer of this state upon process issued
3 by a court of competent jurisdiction. Seizure of a vehicle may be made
4 without process if the vehicle subject to seizure has been the subject
5 of a prior judgment in favor of the state in a forfeiture proceeding
6 based upon this section.

7 (4) Seizure under subsection (3) of this section automatically
8 commences proceedings for forfeiture. The law enforcement agency under
9 whose authority the seizure was made shall cause notice of the seizure
10 and intended forfeiture of the seized vehicle to be served within
11 fifteen days after the seizure on the owner of the vehicle seized, on
12 the person in charge of the vehicle, and on any person having a known
13 right or interest in the vehicle, including a community property
14 interest. The notice of seizure may be served by any method authorized
15 by law or court rule, including but not limited to service by certified
16 mail with return receipt requested. Service by mail is complete upon
17 mailing within the fifteen-day period after the seizure. Notice of
18 seizure in the case of property subject to a security interest that has
19 been perfected on a certificate of title shall be made by service upon
20 the secured party or the secured party's assignee at the address shown
21 on the financing statement or the certificate of title.

22 (5) If no person notifies the seizing law enforcement agency in
23 writing of the person's claim of ownership or right to possession of
24 the seized vehicle within forty-five days of the seizure, the vehicle
25 is deemed forfeited.

26 (6) If a person notifies the seizing law enforcement agency in
27 writing of the person's claim of ownership or right to possession of
28 the seized vehicle within forty-five days of the seizure, the law
29 enforcement agency shall give the person or persons a reasonable
30 opportunity to be heard as to the claim or right. The hearing shall be
31 before the chief law enforcement officer of the seizing agency or the
32 chief law enforcement officer's designee, except where the seizing
33 agency is a state agency as defined in RCW 34.12.020, the hearing shall
34 be before the chief law enforcement officer of the seizing agency or an
35 administrative law judge appointed under chapter 34.12 RCW, except that
36 any person asserting a claim or right may remove the matter to a court
37 of competent jurisdiction. Removal may only be accomplished according
38 to the rules of civil procedure. The person seeking removal of the
39 matter must serve process against the state, county, political

1 subdivision, or municipality that operates the seizing agency, and any
2 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,
3 within forty-five days after the person seeking removal has notified
4 the seizing law enforcement agency of the person's claim of ownership
5 or right to possession. The court to which the matter is to be removed
6 shall be the district court when the aggregate value of the vehicle is
7 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
8 before the seizing agency and any appeal therefrom shall be under Title
9 34 RCW. In a court hearing between two or more claimants to the
10 vehicle involved, the prevailing party shall be entitled to a judgment
11 for costs and reasonable attorneys' fees. The burden of producing
12 evidence shall be upon the person claiming to be the legal owner or the
13 person claiming to have the lawful right to possession of the vehicle.
14 The seizing law enforcement agency shall promptly return the vehicle to
15 the claimant upon a determination by the administrative law judge or
16 court that the claimant is the present legal owner under Title 46 RCW
17 or is lawfully entitled to possession of the vehicle.

18 (7) When a vehicle is forfeited under this chapter the seizing law
19 enforcement agency may sell the vehicle, retain it for official use, or
20 upon application by a law enforcement agency of this state release the
21 vehicle to that agency for the exclusive use of enforcing this title;
22 provided, however, that the agency shall first satisfy any bona fide
23 security interest to which the vehicle is subject under subsection (1)
24 (a) or (c) of this section.

25 (8) When a vehicle is forfeited, the seizing agency shall keep a
26 record indicating the identity of the prior owner, if known, a
27 description of the vehicle, the disposition of the vehicle, the value
28 of the vehicle at the time of seizure, and the amount of proceeds
29 realized from disposition of the vehicle.

30 (9) Each seizing agency shall retain records of forfeited vehicles
31 for at least seven years.

32 (10) Each seizing agency shall file a report including a copy of
33 the records of forfeited vehicles with the state treasurer each
34 calendar quarter.

35 (11) The quarterly report need not include a record of a forfeited
36 vehicle that is still being held for use as evidence during the
37 investigation or prosecution of a case or during the appeal from a
38 conviction.

1 (12) By January 31st of each year, each seizing agency shall remit
2 to the state treasurer an amount equal to ten percent of the net
3 proceeds of vehicles forfeited during the preceding calendar year.
4 Money remitted shall be deposited in the public safety and education
5 account.

6 (13) The net proceeds of a forfeited vehicle is the value of the
7 forfeitable interest in the vehicle after deducting the cost of
8 satisfying a bona fide security interest to which the vehicle is
9 subject at the time of seizure; and in the case of a sold vehicle,
10 after deducting the cost of sale, including reasonable fees or
11 commissions paid to independent selling agents.

12 (14) The value of a sold forfeited vehicle is the sale price. The
13 value of a retained forfeited vehicle is the fair market value of the
14 vehicle at the time of seizure, determined when possible by reference
15 to an applicable commonly used index, such as the index used by the
16 department of licensing. A seizing agency may, but need not, use an
17 independent qualified appraiser to determine the value of retained
18 vehicles. If an appraiser is used, the value of the vehicle appraised
19 is net of the cost of the appraisal.

20

PART III - TECHNICAL AMENDMENTS

21 **Sec. 7.** RCW 3.62.090 and 1994 c 275 s 34 are each amended to read
22 as follows:

23 (1) There shall be assessed and collected in addition to any fines,
24 forfeitures, or penalties assessed, other than for parking infractions,
25 by all courts organized under Title 3 or 35 RCW a public safety and
26 education assessment equal to sixty percent of such fines, forfeitures,
27 or penalties, which shall be remitted as provided in chapters 3.46,
28 3.50, 3.62, and 35.20 RCW. The assessment required by this section
29 shall not be suspended or waived by the court.

30 (2) There shall be assessed and collected in addition to any fines,
31 forfeitures, or penalties assessed, other than for parking infractions
32 and for fines levied under ((RCW 46.61.5051, 46.61.5052, and
33 46.61.5053)) section 5 of this act, and in addition to the public
34 safety and education assessment required under subsection (1) of this
35 section, by all courts organized under Title 3 or 35 RCW, an additional
36 public safety and education assessment equal to fifty percent of the
37 public safety and education assessment required under subsection (1) of

1 this section, which shall be remitted to the state treasurer and
2 deposited as provided in RCW 43.08.250. The additional assessment
3 required by this subsection shall not be suspended or waived by the
4 court.

5 **Sec. 8.** RCW 10.05.060 and 1994 c 275 s 17 are each amended to read
6 as follows:

7 If the report recommends treatment, the court shall examine the
8 treatment plan. If it approves the plan and the petitioner agrees to
9 comply with its terms and conditions and agrees to pay the cost
10 thereof, if able to do so, or arrange for the treatment, an entry shall
11 be made upon the person's court docket showing that the person has been
12 accepted for deferred prosecution. A copy of the treatment plan shall
13 be attached to the docket, which shall then be removed from the regular
14 court dockets and filed in a special court deferred prosecution file.
15 If the charge be one that an abstract of the docket showing the charge,
16 the date of the violation for which the charge was made, and the date
17 of petitioner's acceptance is required to be sent to the department of
18 licensing, an abstract shall be sent, and the department of licensing
19 shall make an entry of the charge and of the petitioner's acceptance
20 for deferred prosecution on the department's driving record of the
21 petitioner. The entry is not a conviction for purposes of Title 46
22 RCW. (~~Upon receipt of the abstract of the docket, the department shall~~
23 ~~issue the petitioner a probationary license in accordance with RCW~~
24 ~~46.20.355, and the petitioner's driver's license shall be on~~
25 ~~probationary status for five years from the date of the violation that~~
26 ~~gave rise to the charge.)) The department shall maintain the record
27 for ten years from date of entry of the order granting deferred
28 prosecution.~~

29 **Sec. 9.** RCW 35.21.165 and 1994 c 275 s 36 are each amended to read
30 as follows:

31 Except as limited by the maximum penalties authorized by law, no
32 city or town may establish a penalty for an act that constitutes the
33 crime of driving while under the influence of intoxicating liquor or
34 any drug, as provided in RCW 46.61.502, or the crime of being in actual
35 physical control of a motor vehicle while under the influence of
36 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is

1 less than the penalties prescribed for those crimes in ((RCW
2 46.61.5051, 46.61.5052, and 46.61.5053)) section 5 of this act.

3 **Sec. 10.** RCW 36.32.127 and 1994 c 275 s 37 are each amended to
4 read as follows:

5 No county may establish a penalty for an act that constitutes the
6 crime of driving while under the influence of intoxicating liquor or
7 any drug, as provided for in RCW 46.61.502, or the crime of being in
8 actual physical control of a motor vehicle while under the influence of
9 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is
10 less than the penalties prescribed for those crimes in ((RCW
11 46.61.5051, 46.61.5052, and 46.61.5053)) section 5 of this act.

12 **Sec. 11.** RCW 46.04.480 and 1994 c 275 s 38 are each amended to
13 read as follows:

14 "Revoke," in all its forms, means the invalidation for a period of
15 one calendar year and thereafter until reissue: PROVIDED, That under
16 the provisions of RCW 46.20.285, 46.20.311, 46.20.265, ((46.61.5051,
17 46.61.5052, or 46.61.5053)) or section 5 of this act, and chapter 46.65
18 RCW the invalidation may last for a period other than one calendar
19 year.

20 **Sec. 12.** RCW 46.20.311 and 1994 c 275 s 27 are each amended to
21 read as follows:

22 (1) The department shall not suspend a driver's license or
23 privilege to drive a motor vehicle on the public highways for a fixed
24 period of more than one year, except as specifically permitted under
25 RCW 46.20.342 or other provision of law. Except for a suspension under
26 RCW 46.20.289 and 46.20.291(5), whenever the license or driving
27 privilege of any person is suspended by reason of a conviction, a
28 finding that a traffic infraction has been committed, pursuant to
29 chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the
30 suspension shall remain in effect until the person gives and thereafter
31 maintains proof of financial responsibility for the future as provided
32 in chapter 46.29 RCW. If the suspension is the result of a violation
33 of RCW 46.61.502 or 46.61.504, the department shall determine the
34 person's eligibility for licensing based upon the reports provided by
35 the alcoholism agency or probation department designated under RCW
36 46.61.5056 and shall deny reinstatement until enrollment and

1 participation in an approved program has been established and the
2 person is otherwise qualified. The department shall not issue to the
3 person a new, duplicate, or renewal license until the person pays a
4 reissue fee of twenty dollars. If the suspension is the result of a
5 violation of RCW 46.61.502 or 46.61.504, or is the result of
6 administrative action under RCW 46.20.308, the reissue fee shall be
7 fifty dollars.

8 (2) Any person whose license or privilege to drive a motor vehicle
9 on the public highways has been revoked, unless the revocation was for
10 a cause which has been removed, is not entitled to have the license or
11 privilege renewed or restored until: (a) After the expiration of one
12 year from the date the license or privilege to drive was revoked; (b)
13 after the expiration of the applicable revocation period provided by
14 ~~((RCW 46.20.308 or 46.61.5052, 46.61.5053, or 46.20.365))~~ section 3 or
15 5 of this act; (c) after the expiration of two years for persons
16 convicted of vehicular homicide; or (d) after the expiration of the
17 applicable revocation period provided by RCW 46.20.265. After the
18 expiration of the appropriate period, the person may make application
19 for a new license as provided by law together with a reissue fee in the
20 amount of twenty dollars, but if the revocation is the result of a
21 violation of RCW 46.20.308, 46.61.502, or 46.61.504 ~~((or is the result~~
22 ~~of administrative action under RCW 46.20.365))~~, the reissue fee shall
23 be fifty dollars. If the revocation is the result of a violation of
24 RCW 46.61.502 or 46.61.504, the department shall determine the person's
25 eligibility for licensing based upon the reports provided by the
26 alcoholism agency or probation department designated under RCW
27 46.61.5056 and shall deny reissuance of a license, permit, or privilege
28 to drive until enrollment and participation in an approved program has
29 been established and the person is otherwise qualified. Except for a
30 revocation under RCW 46.20.265, the department shall not then issue a
31 new license unless it is satisfied after investigation of the driving
32 ability of the person that it will be safe to grant the privilege of
33 driving a motor vehicle on the public highways, and until the person
34 gives and thereafter maintains proof of financial responsibility for
35 the future as provided in chapter 46.29 RCW. For a revocation under
36 RCW 46.20.265, the department shall not issue a new license unless it
37 is satisfied after investigation of the driving ability of the person
38 that it will be safe to grant that person the privilege of driving a
39 motor vehicle on the public highways.

1 (3) Whenever the driver's license of any person is suspended
2 pursuant to Article IV of the nonresident violators compact or RCW
3 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue
4 to the person any new or renewal license until the person pays a
5 reissue fee of twenty dollars. If the suspension is the result of a
6 violation of the laws of this or any other state, province, or other
7 jurisdiction involving (a) the operation or physical control of a motor
8 vehicle upon the public highways while under the influence of
9 intoxicating liquor or drugs, or (b) the refusal to submit to a
10 chemical test of the driver's blood alcohol content, the reissue fee
11 shall be fifty dollars.

12 **Sec. 13.** RCW 46.20.391 and 1994 c 275 s 29 are each amended to
13 read as follows:

14 (1) Any person licensed under this chapter who is convicted of an
15 offense relating to motor vehicles for which suspension or revocation
16 of the driver's license is mandatory, other than vehicular homicide or
17 vehicular assault, may submit to the department an application for an
18 occupational driver's license. The department, upon receipt of the
19 prescribed fee and upon determining that the petitioner is engaged in
20 an occupation or trade that makes it essential that the petitioner
21 operate a motor vehicle, may issue an occupational driver's license and
22 may set definite restrictions as provided in RCW 46.20.394. No person
23 may petition for, and the department shall not issue, an occupational
24 driver's license that is effective during the first thirty days of any
25 suspension or revocation imposed for a violation of RCW 46.61.502 or
26 46.61.504. (~~(No person may petition for, and the department shall not~~
27 ~~issue, an occupational driver's license if the person is ineligible for~~
28 ~~such a license under RCW 46.61.5052 or 46.61.5053.)) A person
29 aggrieved by the decision of the department on the application for an
30 occupational driver's license may request a hearing as provided by rule
31 of the department.~~

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

34 (a) Within one year immediately preceding the date of the offense
35 that gave rise to the present conviction, the applicant has not
36 committed (~~of~~) any (~~{committed any}~~) offense relating to motor
37 vehicles for which suspension or revocation of a driver's license is
38 mandatory; and

1 (b) Within five years immediately preceding the date of the offense
2 that gave rise to the present conviction, the applicant has not
3 committed any of the following offenses: (i) Driving or being in
4 actual physical control of a motor vehicle while under the influence of
5 intoxicating liquor; (ii) vehicular homicide under RCW 46.61.520; or
6 (iii) vehicular assault under RCW 46.61.522; and

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

9 (d) The applicant files satisfactory proof of financial
10 responsibility pursuant to chapter 46.29 RCW.

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

18 **Sec. 14.** RCW 46.61.5054 and 1994 c 275 s 7 are each amended to
19 read as follows:

20 (1)(a) In addition to penalties set forth in RCW 46.61.5051 through
21 46.61.5053 until September 1, 1995, and section 5 of this act
22 thereafter, a one hundred twenty-five dollar fee shall be assessed to
23 a person who is either convicted, sentenced to a lesser charge, or
24 given deferred prosecution, as a result of an arrest for violating RCW
25 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for the
26 purpose of funding the Washington state toxicology laboratory and the
27 Washington state patrol breath test program.

28 (b) Upon a verified petition by the person assessed the fee, the
29 court may suspend payment of all or part of the fee if it finds that
30 the person does not have the ability to pay.

31 (c) When a minor has been adjudicated a juvenile offender for an
32 offense which, if committed by an adult, would constitute a violation
33 of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall
34 assess the one hundred twenty-five dollar fee under (a) of this
35 subsection. Upon a verified petition by a minor assessed the fee, the
36 court may suspend payment of all or part of the fee if it finds that
37 the minor does not have the ability to pay the fee.

1 (2) The fee assessed under subsection (1) of this section shall be
2 collected by the clerk of the court and distributed as follows:

3 (a) Forty percent shall be subject to distribution under RCW
4 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

5 (b) If the case involves a blood test by the state toxicology
6 laboratory, the remainder of the fee shall be forwarded to the state
7 treasurer for deposit in the death investigations account to be used
8 solely for funding the state toxicology laboratory blood testing
9 program.

10 (c) Otherwise, the remainder of the fee shall be forwarded to the
11 state treasurer for deposit in the state patrol highway account to be
12 used solely for funding the Washington state patrol breath test
13 program.

14 (3) This section applies to any offense committed on or after July
15 1, 1993.

16 **Sec. 15.** RCW 46.61.5056 and 1994 c 275 s 9 are each amended to
17 read as follows:

18 (1) A person subject to alcohol assessment and treatment under
19 (~~RCW 46.61.5051, 46.61.5052, or 46.61.5053~~) section 5 of this act
20 shall be required by the court to complete a course in an alcohol
21 information school approved by the department of social and health
22 services or to complete more intensive treatment in a program approved
23 by the department of social and health services, as determined by the
24 court. The court shall notify the department of licensing whenever it
25 orders a person to complete a course or treatment program under this
26 section.

27 (2) A diagnostic evaluation and treatment recommendation shall be
28 prepared under the direction of the court by an alcoholism agency
29 approved by the department of social and health services or a qualified
30 probation department approved by the department of social and health
31 services. A copy of the report shall be forwarded to the department of
32 licensing. Based on the diagnostic evaluation, the court shall
33 determine whether the person shall be required to complete a course in
34 an alcohol information school approved by the department of social and
35 health services or more intensive treatment in a program approved by
36 the department of social and health services.

37 (3) Standards for approval for alcohol treatment programs shall be
38 prescribed by the department of social and health services. The

1 department of social and health services shall periodically review the
2 costs of alcohol information schools and treatment programs.

3 (4) Any agency that provides treatment ordered under ((RCW
4 ~~46.61.5051, 46.61.5052, or 46.61.5053~~)) section 5 of this act, shall
5 immediately report to the appropriate probation department where
6 applicable, otherwise to the court, and to the department of licensing
7 any noncompliance by a person with the conditions of his or her ordered
8 treatment. The court shall notify the department of licensing and the
9 department of social and health services of any failure by an agency to
10 so report noncompliance. Any agency with knowledge of noncompliance
11 that fails to so report shall be fined two hundred fifty dollars by the
12 department of social and health services. Upon three such failures by
13 an agency within one year, the department of social and health services
14 shall revoke the agency's approval under this section.

15 (5) The department of licensing and the department of social and
16 health services may adopt such rules as are necessary to carry out this
17 section.

18 **Sec. 16.** RCW 46.61.5151 and 1994 c 275 s 39 are each amended to
19 read as follows:

20 A sentencing court may allow persons convicted of violating RCW
21 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in
22 ((RCW ~~46.61.5051, 46.61.5052, or 46.61.5053~~)) section 5 of this act in
23 nonconsecutive or intermittent time periods. However, any mandatory
24 minimum sentence under ((RCW ~~46.61.5051, 46.61.5052, or 46.61.5053~~))
25 section 5 of this act shall be served consecutively unless suspended or
26 deferred as otherwise provided by law.

27 **Sec. 17.** RCW 46.63.020 and 1994 c 275 s 33 and 1994 c 141 s 2 are
28 each reenacted and amended to read as follows:

29 Failure to perform any act required or the performance of any act
30 prohibited by this title or an equivalent administrative regulation or
31 local law, ordinance, regulation, or resolution relating to traffic
32 including parking, standing, stopping, and pedestrian offenses, is
33 designated as a traffic infraction and may not be classified as a
34 criminal offense, except for an offense contained in the following
35 provisions of this title or a violation of an equivalent administrative
36 regulation or local law, ordinance, regulation, or resolution:

1 (1) RCW 46.09.120(2) relating to the operation of a nonhighway
2 vehicle while under the influence of intoxicating liquor or a
3 controlled substance;
4 (2) RCW 46.09.130 relating to operation of nonhighway vehicles;
5 (3) RCW 46.10.090(2) relating to the operation of a snowmobile
6 while under the influence of intoxicating liquor or narcotics or
7 habit-forming drugs or in a manner endangering the person of another;
8 (4) RCW 46.10.130 relating to the operation of snowmobiles;
9 (5) Chapter 46.12 RCW relating to certificates of ownership and
10 registration;
11 (6) RCW 46.16.010 relating to initial registration of motor
12 vehicles;
13 (7) RCW 46.16.011 relating to permitting unauthorized persons to
14 drive;
15 (8) RCW 46.16.160 relating to vehicle trip permits;
16 (9) RCW 46.16.381 (6) or (9) relating to unauthorized use or
17 acquisition of a special placard or license plate for disabled persons'
18 parking;
19 (10) RCW 46.20.021 relating to driving without a valid driver's
20 license;
21 (11) RCW 46.20.336 relating to the unlawful possession and use of
22 a driver's license;
23 (12) RCW 46.20.342 relating to driving with a suspended or revoked
24 license or status;
25 (13) RCW 46.20.410 relating to the violation of restrictions of an
26 occupational driver's license;
27 (14) RCW 46.20.420 relating to the operation of a motor vehicle
28 with a suspended or revoked license;
29 (15) RCW 46.20.750 relating to assisting another person to start a
30 vehicle equipped with an ignition interlock device;
31 (16) RCW 46.25.170 relating to commercial driver's licenses;
32 (17) Chapter 46.29 RCW relating to financial responsibility;
33 (18) RCW 46.30.040 relating to providing false evidence of
34 financial responsibility;
35 (19) RCW 46.37.435 relating to wrongful installation of
36 sunscreening material;
37 (20) RCW 46.44.180 relating to operation of mobile home pilot
38 vehicles;

1 (21) RCW 46.48.175 relating to the transportation of dangerous
2 articles;

3 (22) RCW 46.52.010 relating to duty on striking an unattended car
4 or other property;

5 (23) RCW 46.52.020 relating to duty in case of injury to or death
6 of a person or damage to an attended vehicle;

7 (24) RCW 46.52.090 relating to reports by repairmen, storagemen,
8 and appraisers;

9 (25) RCW 46.52.100 relating to driving under the influence of
10 liquor or drugs;

11 (26) RCW 46.52.130 relating to confidentiality of the driving
12 record to be furnished to an insurance company, an employer, and an
13 alcohol/drug assessment or treatment agency;

14 (27) RCW 46.55.020 relating to engaging in the activities of a
15 registered tow truck operator without a registration certificate;

16 (28) RCW 46.55.035 relating to prohibited practices by tow truck
17 operators;

18 (29) RCW 46.61.015 relating to obedience to police officers,
19 flagmen, or fire fighters;

20 (30) RCW 46.61.020 relating to refusal to give information to or
21 cooperate with an officer;

22 (31) RCW 46.61.022 relating to failure to stop and give
23 identification to an officer;

24 (32) RCW 46.61.024 relating to attempting to elude pursuing police
25 vehicles;

26 (33) RCW 46.61.500 relating to reckless driving;

27 (34) RCW 46.61.502((7)) and 46.61.504((~~7~~, ~~46.61.5051~~, ~~46.61.5052~~,
28 ~~and~~ ~~46.61.5053~~)) relating to persons under the influence of
29 intoxicating liquor or drugs;

30 (35) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

31 (36) RCW 46.61.522 relating to vehicular assault;

32 (37) RCW 46.61.525 relating to negligent driving;

33 (38) RCW 46.61.527(4) relating to reckless endangerment of roadway
34 workers;

35 (39) RCW 46.61.530 relating to racing of vehicles on highways;

36 (40) RCW 46.61.685 relating to leaving children in an unattended
37 vehicle with the motor running;

38 (41) RCW 46.64.010 relating to unlawful cancellation of or attempt
39 to cancel a traffic citation;

1 (42) RCW 46.64.048 relating to attempting, aiding, abetting,
2 coercing, and committing crimes;

3 (43) Chapter 46.65 RCW relating to habitual traffic offenders;

4 (44) Chapter 46.70 RCW relating to unfair motor vehicle business
5 practices, except where that chapter provides for the assessment of
6 monetary penalties of a civil nature;

7 (45) Chapter 46.72 RCW relating to the transportation of passengers
8 in for hire vehicles;

9 (46) Chapter 46.80 RCW relating to motor vehicle wreckers;

10 (47) Chapter 46.82 RCW relating to driver's training schools;

11 (48) RCW 46.87.260 relating to alteration or forgery of a cab card,
12 letter of authority, or other temporary authority issued under chapter
13 46.87 RCW;

14 (49) RCW 46.87.290 relating to operation of an unregistered or
15 unlicensed vehicle under chapter 46.87 RCW.

16 **Sec. 18.** RCW 46.04.015 and 1994 c 275 s 1 are each amended to read
17 as follows:

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

22 **Sec. 19.** RCW 46.61.506 and 1994 c 275 s 26 are each amended to
23 read as follows:

24 (1) Upon the trial of any civil or criminal action or proceeding
25 arising out of acts alleged to have been committed by any person while
26 driving or in actual physical control of a vehicle while under the
27 influence of intoxicating liquor or any drug, if the person's alcohol
28 concentration is less than 0.10, it is evidence that may be considered
29 with other competent evidence in determining whether the person was
30 under the influence of intoxicating liquor or any drug.

31 (2) The breath analysis shall be based upon grams of alcohol per
32 two hundred ten liters of breath. The foregoing provisions of this
33 section shall not be construed as limiting the introduction of any
34 other competent evidence bearing upon the question whether the person
35 was under the influence of intoxicating liquor or any drug.

36 (3) Analysis of the person's blood or breath to be considered valid
37 under the provisions of this section or RCW 46.61.502 or 46.61.504

1 shall have been performed according to methods approved by the state
2 toxicologist and by an individual possessing a valid permit issued by
3 the state toxicologist for this purpose. The state toxicologist is
4 directed to approve satisfactory techniques or methods, to supervise
5 the examination of individuals to ascertain their qualifications and
6 competence to conduct such analyses, and to issue permits which shall
7 be subject to termination or revocation at the discretion of the state
8 toxicologist.

9 (4) When a blood test is administered under the provisions of RCW
10 46.20.308, the withdrawal of blood for the purpose of determining its
11 alcoholic or drug content may be performed only by a physician, a
12 registered nurse, or a qualified technician. This limitation shall not
13 apply to the taking of breath specimens.

14 (5) The person tested may have a physician, or a qualified
15 technician, chemist, registered nurse, or other qualified person of his
16 or her own choosing administer one or more tests in addition to any
17 administered at the direction of a law enforcement officer. The
18 failure or inability to obtain an additional test by a person shall not
19 preclude the admission of evidence relating to the test or tests taken
20 at the direction of a law enforcement officer.

21 (6) Upon the request of the person who shall submit to a test or
22 tests at the request of a law enforcement officer, full information
23 concerning the test or tests shall be made available to him or her or
24 his or her attorney.

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

27 "Reasonable grounds", when used in the context of a law enforcement
28 officer's decision to make an arrest or take other enforcement action,
29 means probable cause.

30 NEW SECTION. **Sec. 21.** RCW 46.20.309 is recodified as a section in
31 chapter 46.61 RCW.

32 NEW SECTION. **Sec. 22.** The following acts or parts of acts are
33 each repealed:

- 34 (1) RCW 46.20.365 and 1994 c 275 s 12;
35 (2) RCW 46.61.5051 and 1994 c 275 s 4;
36 (3) RCW 46.61.5052 and 1994 c 275 s 5; and

1 (4) RCW 46.61.5053 and 1994 c 275 s 6.

2 NEW SECTION. **Sec. 23.** 1994 c 275 s 44 (uncodified) is hereby
3 repealed.

4 NEW SECTION. **Sec. 24.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 25.** This act shall take effect September 1,
9 1995, except for sections 14 and 23 of this act which are necessary for
10 the immediate preservation of the public peace, health, or safety, or
11 support of the state government and its existing public institutions,
12 and shall take effect immediately."

13 **SSB 5141** - H COMM AMD
14 By Committee on Law & Justice

15
16 On page 1, line 1 of the title, after "drugs;" strike the remainder
17 of the title and insert "amending RCW 46.20.308, 46.20.309, 46.20.355,
18 46.61.5058, 3.62.090, 10.05.060, 35.21.165, 36.32.127, 46.04.480,
19 46.20.311, 46.20.391, 46.61.5054, 46.61.5056, 46.61.5151, 46.04.015,
20 and 46.61.506; reenacting and amending RCW 46.63.020; adding a new
21 section to chapter 46.20 RCW; adding new sections to chapter 46.61 RCW;
22 adding a new section to chapter 46.04 RCW; recodifying RCW 46.20.309;
23 repealing RCW 46.20.365, 46.61.5051, 46.61.5052, and 46.61.5053;
24 repealing 1994 c 275 s 44 (uncodified); prescribing penalties;
25 providing an effective date; and declaring an emergency."

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