

# HOUSE BILL REPORT

## SHB 1750

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### As Passed House:

March 8, 1995

**Title:** An act relating to administratively suspending, revoking, denying, or placing in a probationary status a person's license, permit, or privilege to drive.

**Brief Description:** Authorizing additional administrative penalties relating to the driving privilege.

**Sponsors:** By House Committee on Law & Justice (originally sponsored by Representatives Hickel, Appelwick, Padden, Robertson and Delvin).

### Brief History:

#### Committee Activity:

Law & Justice: 2/14/95, 2/21/95 [DPS].

#### Floor Activity:

Passed House: 3/8/95, 97-0.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Campbell; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Sheahan; Smith; Thibaudeau and Veloria.

**Staff:** Bill Perry (786-7123).

**Background:** The crime of driving while under the influence (DUI) can be committed in either of two ways. A person who is "under the influence" may be convicted of the crime regardless of the amount of alcohol shown to be in his or her system by a blood or breath test. However, the more common way in which a person commits the offense of drunk driving law is by what is called a "per se" violation.

PER SE VIOLATIONS. A driver with more than a legally prescribed amount of alcohol in his or her system is said to have committed a "per se" violation. That is, the offense is purely a matter of alcohol concentration and is not related to the extent of apparent impairment the driver may have. In most DUI cases, alcohol concentration (BAC) evidence is available and is presented to show a per se offense. A BAC of "0.10" or more is a per se violation. (The 0.10 means either 0.10 grams

of alcohol per 210 liters of breath, or 0.10 percent by weight of alcohol in the blood. By virtue of the so-called partition ratio, these breath and blood amounts are taken to be equivalent.)

There are two ways a person who is arrested for drunk driving may ultimately be punished. One is criminal and the other is civil. If the person is convicted of the crime of drunk driving, criminal sanctions are available that include jail time, fines, and loss of driving privileges. If the person has refused to take a breath test, or has taken the test and failed it, there is the civil sanction available of administrative loss of driving privileges. The civil administrative procedure requires showing a violation only by a "preponderance of the evidence," rather than having to show a violation "beyond a reasonable doubt," as is the case in a criminal prosecution. Civil administrative sanctions are imposed by the Department of Licensing (DOL).

PER SE ADMINISTRATIVE LICENSE REVOCATION. A person who registers 0.10 percent or more on a BAC test is subject to the following administrative sanctions: For a first such per se violation, issuance of a probationary license which allows the person to drive normally, but which has penalty consequences if the person is subsequently convicted for another drunk driving offense; for a second per se violation within five years, revocation for two years. A suspension or revocation will be stayed if the person is granted a deferred prosecution on criminal charges arising out of the same offense that triggered the administrative action. An administrative sanction runs consecutively to any license suspension or revocation imposed as part of a criminal conviction arising out of the same incident.

Administrative suspension or revocation applies to any minor driver with an alcohol concentration of 0.02 percent or higher. For purposes of this provision a "minor" is anyone under the age of 21. Unlike the 0.10 percent per se standard in the drunk driving law, the 0.02 percent standard is not explicitly a criminal one, although another law (the "minor in possession" law) makes it generally illegal for a minor to have alcohol in his or her system in any quantity, whether the minor is driving or not. The administrative sanctions for a violation of the 0.02 percent standard by a minor are as follows: For a first violation, suspension for 90 days; for a second violation within five years, revocation for one year or until age 21, whichever is longer.

IMPLIED CONSENT ADMINISTRATIVE LICENSE REVOCATION. Under the Implied Consent Law, each licensed driver has agreed to take a test of his or her alcohol concentration (BAC) whenever a police officer has reasonable grounds to believe the driver has committed DUI. Refusal to take a BAC results in administrative loss of driving privileges, regardless of whether criminal charges are filed. This administrative sanction is designed to encourage drivers to take the BAC test when asked to. The administrative sanctions for violating the implied consent law are as follows: For a first refusal, revocation for one year; for a second refusal within five years, revocation for two years.

As part of the Implied Consent Law, an arresting officer is required to give a driver certain warnings about the consequences of refusing to take a BAC test. At least some trial courts have held that in light of changes made to the drunk driving law in 1994, these warnings are no longer adequate because there are now administrative consequences for taking the test and failing it.

PROCEDURES FOR ADMINISTRATIVE LICENSE REVOCATIONS. A variety of provisions apply to the administrative suspension or revocation of drivers' licenses. These provisions relate to how and when a person may request a hearing before DOL, what must be proved in a contested case, and how an appeal from a DOL sanction may be appealed. For instance, a driver has five days to request a hearing following arrest, and DOL has 30 days from the arrest to conduct the hearing, in cases involving violations of the 0.10 percent per se standard.

There are differences among these provisions depending on whether the action is based on an Implied Consent Law refusal, a per se violation of the 0.10 percent standard, or a violation by a minor of the 0.02 percent standard. For instance, an appeal from a revocation under the Implied Consent Law is to superior court on a "do novo" basis, which means that the court will hear the case anew as though it were a new trial. On the other hand, appeals to superior courts from administrative actions for per se violations are "on the record" which means that the court considers only the record of the DOL hearing.

**Summary of Bill:** Various changes are made regarding the administrative suspension or revocation of driving privileges of a person who violates the Implied Consent Law by refusing a BAC test, or who takes and fails a BAC test. The procedural requirements for requesting, conducting, and appealing an administrative hearing are consolidated into a single provision.

PROCEDURES FOR ADMINISTRATIVE LICENSE REVOCATIONS. The consolidated procedures for handling Implied Consent Law violations and administrative per se violations include the following:

- o Additional warnings must be provided for persons under the Implied Consent Law. In addition to being warned that refusal to take a BAC test will result in administrative license sanctions, a person must be warned that taking the test and failing it will also result in administrative sanctions.
- o The requirement that an arresting officer must issue a temporary license is replaced with a provision that allows the officer to mark the license so that it will serve as a temporary 45-day license.
- o A person has 15 days from arrest to request a hearing before DOL. DOL has 45 days from arrest to conduct the hearing if one is requested.

- o A hearing is to be conducted in the county of arrest unless DOL chooses to conduct the hearing by phone or other electronic means.
- o The arresting officer's sworn report is prima facie evidence that the officer had reasonable grounds to make an arrest and that the officer complied with applicable requirements, such as giving the necessary warning.
- o Except in the case of a refusal to take a BAC test, a person's temporary driving privileges may be extended by up to 90 days if the person petitions for a deferred prosecution of criminal charges arising out of the same incident. Except for refusal cases, obtaining a deferred prosecution will stay the administrative suspension or revocation.
- o All appeals from a DOL administrative suspension or revocation are "on the record."
- o An appeal from a DOL administrative action does not stay the action pending the appeal, unless the court finds that the appellant is likely to prevail on appeal and that failure to grant a stay will result in irreparable harm to the appellant.

ADMINISTRATIVE SANCTIONS. The following administrative license sanctions apply to Implied Consent Law refusals and administrative per se violations:

- o Refusals. For a first refusal, revocation for one year; for a second refusal within five years (or a first refusal when there has been a drunk driving incident in the previous five years), revocation for two years or until age 21. (Administrative revocations for refusals run consecutively to any criminal suspension or revocation.)
- o Administrative per se for BACs over 0.10 percent. For a first offense, probationary license status for five years; for a second offense within five years, revocation for two years.
- o Administrative per se for minors with BACs over 0.02 percent. For a first offense, suspension for 90 days; for a second offense, revocation for one year or until age 21.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Bill:** The bill takes effect September 1, 1995.

**Testimony For:** The bill is a good streamlining of the administrative revocation system. It makes the law more workable without changing policy.

**Testimony Against:** None.

**Testified:** Kit Hawkins, Restaurant Association (pro); Linda Grant, Association of Alcoholism and Addictions Programs (pro); Patricia Stromberg, citizen (pro); Clark Holloway, Department of Licensing (neutral); Mike Patrick, Washington State Council of Police Officers (neutral with concerns); Steve Lind, Washington Traffic Safety Commission (with comments); Tom McBride, Washington Association of Prosecuting Attorneys (con without changes); Susan Arb, Yakima County Prosecutor's Office (con without changes); and David Chapman, Washington Association of Criminal Defense Attorneys (pro with suggestion).