
SUBSTITUTE HOUSE BILL 1501

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Transportation Policy & Budget (originally sponsored by Representatives Robertson, Scott and Mielke; by request of Department of Licensing)

Read first time 02/24/97.

1 AN ACT Relating to drivers' licenses; amending RCW 13.40.265,
2 46.20.265, 46.20.285, 46.20.308, 46.20.355, 46.29.040, 46.61.503, and
3 46.61.5152; creating a new section; repealing RCW 46.61.5057; providing
4 an effective date; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** It is the intent and purpose of this act to
7 clarify procedural issues and make technical corrections to statutes
8 relating to drivers' licenses. This act should not be construed as
9 changing existing public policy.

10 **Sec. 2.** RCW 13.40.265 and 1994 sp.s. c 7 s 435 are each amended to
11 read as follows:

12 (1)(a) If a juvenile thirteen years of age or older is found by
13 juvenile court to have committed an offense while armed with a firearm
14 or an offense that is a violation of RCW 9.41.040(1)((+e)) (b)(iii) or
15 chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court shall notify the
16 department of licensing within twenty-four hours after entry of the
17 judgment.

1 (b) Except as otherwise provided in (c) of this subsection, upon
2 petition of a juvenile who has been found by the court to have
3 committed an offense that is a violation of chapter 66.44, 69.41,
4 69.50, or 69.52 RCW, the court may at any time the court deems
5 appropriate notify the department of licensing that the juvenile's
6 driving privileges should be reinstated.

7 (c) If the offense is the juvenile's first violation of chapter
8 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the
9 court for reinstatement of the juvenile's privilege to drive revoked
10 pursuant to RCW 46.20.265 until ninety days after the date the juvenile
11 turns sixteen or ninety days after the judgment was entered, whichever
12 is later. If the offense is the juvenile's second or subsequent
13 violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile
14 may not petition the court for reinstatement of the juvenile's
15 privilege to drive revoked pursuant to RCW 46.20.265 until the date the
16 juvenile turns seventeen or one year after the date judgment was
17 entered, whichever is later.

18 (2)(a) If a juvenile enters into a diversion agreement with a
19 diversion unit pursuant to RCW 13.40.080 concerning an offense that is
20 a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the diversion
21 unit shall notify the department of licensing within twenty-four hours
22 after the diversion agreement is signed.

23 (b) If a diversion unit has notified the department pursuant to (a)
24 of this subsection, the diversion unit shall notify the department of
25 licensing when the juvenile has completed the agreement.

26 **Sec. 3.** RCW 46.20.265 and 1994 sp.s. c 7 s 439 are each amended to
27 read as follows:

28 (1) In addition to any other authority to revoke driving privileges
29 under this chapter, the department shall revoke all driving privileges
30 of a juvenile when the department receives notice from a court pursuant
31 to RCW 9.41.040(5), 13.40.265, 66.44.365, 69.41.065, 69.50.420,
32 69.52.070, or a substantially similar municipal ordinance adopted by a
33 local legislative authority, or from a diversion unit pursuant to RCW
34 13.40.265. The revocation shall be imposed without hearing.

35 (2) The driving privileges of the juvenile revoked under subsection
36 (1) of this section shall be revoked in the following manner:

1 (a) Upon receipt of the first notice, the department shall impose
2 a revocation for one year, or until the juvenile reaches seventeen
3 years of age, whichever is longer.

4 (b) Upon receipt of a second or subsequent notice, the department
5 shall impose a revocation for two years or until the juvenile reaches
6 eighteen years of age, whichever is longer.

7 (c) Each offense for which the department receives notice shall
8 result in a separate period of revocation. All periods of revocation
9 imposed under this section that could otherwise overlap shall run
10 consecutively and no period of revocation imposed under this section
11 shall begin before the expiration of all other periods of revocation
12 imposed under this section or other law.

13 (3) If the department receives notice from a court that the
14 juvenile's privilege to drive should be reinstated, the department
15 shall immediately reinstate any driving privileges that have been
16 revoked under this section if the minimum term of revocation as
17 specified in RCW 13.40.265(1)(c), 66.44.365(3), 69.41.065(3),
18 69.50.420(3), 69.52.070(3), or similar ordinance has expired, and
19 subject to subsection (2)(c) of this section.

20 (4)(a) If the department receives notice pursuant to RCW
21 13.40.265(2)(b) from a diversion unit that a juvenile has completed a
22 diversion agreement for which the juvenile's driving privileges were
23 revoked, the department shall reinstate any driving privileges revoked
24 under this section as provided in (b) of this subsection, subject to
25 subsection (2)(c) of this section.

26 (b) If the diversion agreement was for the juvenile's first
27 violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department
28 shall not reinstate the juvenile's privilege to drive until the later
29 of ninety days after the date the juvenile turns sixteen or ninety days
30 after the juvenile entered into a diversion agreement for the offense.
31 If the diversion agreement was for the juvenile's second or subsequent
32 violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department
33 shall not reinstate the juvenile's privilege to drive until the later
34 of the date the juvenile turns seventeen or one year after the juvenile
35 entered into the second or subsequent diversion agreement.

36 **Sec. 4.** RCW 46.20.285 and 1996 c 199 s 5 are each amended to read
37 as follows:

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

5 (1) For vehicular homicide the period of revocation shall be two
6 years. The revocation period shall be tolled during any period of
7 total confinement for the offense;

8 (2) Vehicular assault. The revocation period shall be tolled
9 during any period of total confinement for the offense;

10 (3) Driving a motor vehicle while under the influence of
11 intoxicating liquor or a narcotic drug, or under the influence of any
12 other drug to a degree which renders the driver incapable of safely
13 driving a motor vehicle, upon a showing by the department's records
14 that the conviction is the second or subsequent such conviction for the
15 driver within a period of five years. (~~Upon a showing that the~~
16 ~~conviction is the third such conviction for the driver within a period~~
17 ~~of five years, the period of revocation shall be two years)) The
18 revocation period shall be as provided in RCW 46.61.5055;~~

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

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

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

27 (7) Reckless driving upon a showing by the department's records
28 that the conviction is the third such conviction for the driver within
29 a period of two years.

30 **Sec. 5.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to read
31 as follows:

32 (1) Any person who operates a motor vehicle within this state is
33 deemed to have given consent, subject to the provisions of RCW
34 46.61.506, to a test or tests of his or her breath or blood for the
35 purpose of determining the alcohol concentration or presence of any
36 drug in his or her breath or blood if arrested for any offense where,
37 at the time of the arrest, the arresting officer has reasonable grounds
38 to believe the person had been driving or was in actual physical

1 control of a motor vehicle while under the influence of intoxicating
2 liquor or any drug or was in violation of RCW 46.61.503.

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

23 (a) His or her license, permit, or privilege to drive will be
24 revoked or denied if he or she refuses to submit to the test;

25 (b) His or her license, permit, or privilege to drive will be
26 suspended, revoked, denied, or placed in probationary status if the
27 test is administered and the test indicates the alcohol concentration
28 of the person's breath or blood is 0.10 or more, in the case of a
29 person age twenty-one or over, or 0.02 or more in the case of a person
30 under age twenty-one; and

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

33 (3) Except as provided in this section, the test administered shall
34 be of the breath only. If an individual is unconscious or is under
35 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
36 or vehicular assault as provided in RCW 46.61.522, or if an individual
37 is under arrest for the crime of driving while under the influence of
38 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
39 results from an accident in which there has been serious bodily injury

1 to another person, a breath or blood test may be administered without
2 the consent of the individual so arrested.

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

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

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

28 (b) Serve notice in writing on the person on behalf of the
29 department of his or her right to a hearing, specifying the steps he or
30 she must take to obtain a hearing as provided by subsection (8) of this
31 section;

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

34 (d) Serve notice in writing that the marked license or permit, if
35 any, is a temporary license that is valid for sixty days from the date
36 of arrest or from the date notice has been given in the event notice is
37 given by the department following a blood test, or until the
38 suspension, revocation, or denial of the person's license, permit, or
39 privilege to drive is sustained at a hearing pursuant to subsection (8)

1 of this section, whichever occurs first. No temporary license is valid
2 to any greater degree than the license or permit that it replaces; and

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

7 (i) That the officer had reasonable grounds to believe the arrested
8 person had been driving or was in actual physical control of a motor
9 vehicle within this state while under the influence of intoxicating
10 liquor or drugs, or both, or was under the age of twenty-one years and
11 had been driving or was in actual physical control of a motor vehicle
12 while having an alcohol concentration of 0.02 or more;

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

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

20 (7) The department of licensing, upon the receipt of a sworn report
21 or report under a declaration authorized by RCW 9A.72.085 under
22 subsection (6)(e) of this section, shall suspend, revoke, deny, or
23 place in probationary status the person's license, permit, or privilege
24 to drive or any nonresident operating privilege, as provided in RCW
25 46.20.3101, such suspension, revocation, denial, or placement in
26 probationary status to be effective beginning sixty days from the date
27 of arrest or from the date notice has been given in the event notice is
28 given by the department following a blood test, or when sustained at a
29 hearing pursuant to subsection (8) of this section, whichever occurs
30 first.

31 (8) A person receiving notification under subsection (6)(b) of this
32 section may, within thirty days after the notice has been given,
33 request in writing a formal hearing before the department. The person
34 shall pay a fee of one hundred dollars as part of the request. If the
35 request is mailed, it must be postmarked within thirty days after
36 receipt of the notification. Upon timely receipt of such a request for
37 a formal hearing, including receipt of the required one hundred dollar
38 fee, the department shall afford the person an opportunity for a
39 hearing. Except as otherwise provided in this section, the hearing is

1 subject to and shall be scheduled and conducted in accordance with RCW
2 46.20.329 and 46.20.332. The hearing shall be conducted in the county
3 of the arrest, except that all or part of the hearing may, at the
4 discretion of the department, be conducted by telephone or other
5 electronic means. The hearing shall be held within sixty days
6 following the arrest or following the date notice has been given in the
7 event notice is given by the department following a blood test, unless
8 otherwise agreed to by the department and the person, in which case the
9 action by the department shall be stayed, and any valid temporary
10 license marked under subsection (6)(c) of this section extended, if the
11 person is otherwise eligible for licensing. For the purposes of this
12 section, the scope of the hearing shall cover the issues of whether a
13 law enforcement officer had reasonable grounds to believe the person
14 had been driving or was in actual physical control of a motor vehicle
15 within this state while under the influence of intoxicating liquor or
16 any drug or had been driving or was in actual physical control of a
17 motor vehicle within this state while having alcohol in his or her
18 system in a concentration of 0.02 or more and was under the age of
19 twenty-one, whether the person was placed under arrest, and (a) whether
20 the person refused to submit to the test or tests upon request of the
21 officer after having been informed that such refusal would result in
22 the revocation of the person's license, permit, or privilege to drive,
23 or (b) if a test or tests were administered, whether the applicable
24 requirements of this section were satisfied before the administration
25 of the test or tests, whether the person submitted to the test or
26 tests, or whether a test was administered without express consent as
27 permitted under this section, and whether the test or tests indicated
28 that the alcohol concentration of the person's breath or blood was 0.10
29 or more if the person was age twenty-one or over at the time of the
30 arrest, or was 0.02 or more if the person was under the age of twenty-
31 one at the time of the arrest. The sworn report or report under a
32 declaration authorized by RCW 9A.72.085 submitted by a law enforcement
33 officer is prima facie evidence that the officer had reasonable grounds
34 to believe the person had been driving or was in actual physical
35 control of a motor vehicle within this state while under the influence
36 of intoxicating liquor or drugs, or both, or the person had been
37 driving or was in actual physical control of a motor vehicle within
38 this state while having alcohol in his or her system in a concentration

1 of 0.02 or more and was under the age of twenty-one and that the
2 officer complied with the requirements of this section.

3 A hearing officer shall conduct the hearing, may issue subpoenas
4 for the attendance of witnesses and the production of documents, and
5 shall administer oaths to witnesses. The hearing officer shall not
6 issue a subpoena for the attendance of a witness at the request of the
7 person unless the request is accompanied by the fee required by RCW
8 5.56.010 for a witness in district court. The sworn report or report
9 under a declaration authorized by RCW 9A.72.085 of the law enforcement
10 officer and any other evidence accompanying the report shall be
11 admissible without further evidentiary foundation and the
12 certifications authorized by the criminal rules for courts of limited
13 jurisdiction shall be admissible without further evidentiary
14 foundation. The person may be represented by counsel, may question
15 witnesses, may present evidence, and may testify. The department shall
16 order that the suspension, revocation, denial, or placement in
17 probationary status either be rescinded or sustained.

18 (9) If the suspension, revocation, denial, or placement in
19 probationary status is sustained after such a hearing, the person whose
20 license, privilege, or permit is suspended, revoked, denied, or placed
21 in probationary status has the right to file a petition in the superior
22 court of the county of arrest to review the final order of revocation
23 by the department in the same manner as an appeal from a decision of a
24 court of limited jurisdiction. Notice of appeal must be filed within
25 thirty days after the date the final order is served or the right to
26 appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other
27 statutes or rules referencing de novo review, the appeal shall be
28 limited to a review of the record of the administrative hearing. The
29 appellant must pay the costs associated with obtaining the record of
30 the hearing before the hearing officer. The filing of the appeal does
31 not stay the effective date of the suspension, revocation, denial, or
32 placement in probationary status. A petition filed under this
33 subsection must include the petitioner's grounds for requesting review.
34 Upon granting petitioner's request for review, the court shall review
35 the department's final order of suspension, revocation, denial, or
36 placement in probationary status as expeditiously as possible. The
37 review must be limited to a determination of whether the department has
38 committed any errors of law. The superior court shall accept those
39 factual determinations supported by substantial evidence in the record:

1 (a) That were expressly made by the department; or (b) that may
2 reasonably be inferred from the final order of the department. The
3 superior court may reverse, affirm, or modify the decision of the
4 department or remand the case back to the department for further
5 proceedings. The decision of the superior court must be in writing and
6 filed in the clerk's office with the other papers in the case. The
7 court shall state the reasons for the decision. If judicial relief is
8 sought for a stay or other temporary remedy from the department's
9 action, the court shall not grant such relief unless the court finds
10 that the appellant is likely to prevail in the appeal and that without
11 a stay the appellant will suffer irreparable injury. If the court
12 stays the suspension, revocation, denial, or placement in probationary
13 status it may impose conditions on such stay.

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

37 A suspension, revocation, or denial imposed under this section,
38 other than as a result of a breath or blood test refusal, shall be
39 stayed if the person is accepted for deferred prosecution as provided

1 in chapter 10.05 RCW for the incident upon which the suspension,
2 revocation, or denial is based. If the deferred prosecution is
3 terminated, the stay shall be lifted and the suspension, revocation, or
4 denial reinstated. If the deferred prosecution is completed, the stay
5 shall be lifted and the suspension, revocation, or denial canceled.

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

12 **Sec. 6.** RCW 46.20.355 and 1995 1st sp.s. c 17 s 1 are each amended
13 to read as follows:

14 (1) Upon placing a license, permit, or privilege to drive in
15 probationary status under RCW 46.20.3101(2)(a), or upon receipt of an
16 abstract indicating a deferred prosecution has been granted under RCW
17 10.05.060, or upon receipt of a notice of conviction of RCW 46.61.502
18 or 46.61.504, the department of licensing shall order the person to
19 surrender any nonprobationary Washington state driver's license that
20 may be in his or her possession. The department shall revoke the
21 license, permit, or privilege to drive of any person who fails to
22 surrender it as required by this section for one year, unless the
23 license has been previously surrendered to the department, a law
24 enforcement officer, or a court, or the person has completed an
25 affidavit of lost, stolen, destroyed, or previously surrendered
26 license, such revocation to take effect thirty days after notice is
27 given of the requirement for license surrender.

28 (2) The department shall place a person's driving privilege in
29 probationary status as required by RCW 10.05.060, 46.20.308, or
30 46.61.5055 for a period of five years from the date the probationary
31 status is required to go into effect.

32 (3) Following receipt of an abstract indicating a deferred
33 prosecution has been granted under RCW 10.05.060, or following receipt
34 of a sworn report under RCW 46.20.308 that requires immediate placement
35 in probationary status under RCW 46.20.3101(2)(a), or upon
36 reinstatement or reissuance of a driver's license suspended or revoked
37 as the result of a conviction of RCW 46.61.502 or 46.61.504, the
38 department shall require the person to obtain a probationary license in

1 order to operate a motor vehicle in the state of Washington, except as
2 otherwise exempt under RCW 46.20.025. The department shall not issue
3 the probationary license unless the person is otherwise qualified for
4 licensing, and the person must renew the probationary license on the
5 same cycle as the person's regular license would have been renewed
6 until the expiration of the five-year probationary status period
7 imposed under subsection (2) of this section.

8 (4) For each original issue or renewal of a probationary license
9 under this section, the department shall charge a fee of fifty dollars
10 in addition to any other licensing fees required. Except for when
11 renewing a probationary license, the department shall waive the
12 requirement to obtain an additional probationary license and the fifty-
13 dollar fee if the person has a probationary license in his or her
14 possession at the time a new probationary license is required.

15 (5) A probationary license shall enable the department and law
16 enforcement personnel to determine that the person is on probationary
17 status. The fact that a person's driving privilege is in probationary
18 status or that the person has been issued a probationary license shall
19 not be a part of the person's record that is available to insurance
20 companies.

21 **Sec. 7.** RCW 46.29.040 and 1963 c 169 s 4 are each amended to read
22 as follows:

23 Any order of the director under the provisions of this chapter
24 shall be subject to review, at the instance of any party in interest,
25 by appeal to the superior court of Thurston county, or at his option to
26 the superior court of the county of his residence. The scope of such
27 review shall be limited to that prescribed by RCW 7.16.120 governing
28 review by certiorari. Notice of appeal must be filed within ~~((ten))~~
29 thirty days after ~~((receipt))~~ service of the notice of such order. The
30 court shall determine whether the filing of the appeal shall operate as
31 a stay of any such order of the director. Upon the filing the notice
32 of appeal the court shall issue an order to the director to show cause
33 why the order should not be reversed or modified. The order to show
34 cause shall be returnable not less than ten nor more than thirty days
35 after the date of service thereof upon the director. The court after
36 hearing the matter may modify, affirm or reverse the order of the
37 director in whole or in part.

1 **Sec. 8.** RCW 46.61.503 and 1995 c 332 s 2 are each amended to read
2 as follows:

3 (1) Notwithstanding any other provision of this title, a person is
4 guilty of driving or being in physical control of a motor vehicle after
5 consuming alcohol if the person operates or is in physical control of
6 a motor vehicle within this state and the person:

7 (a) Is under the age of twenty-one;

8 (b) Has, within two hours after operating or being in physical
9 control of the motor vehicle, an alcohol concentration of 0.02 or more,
10 as shown by analysis of the person's breath or blood made under RCW
11 46.61.506.

12 (2) It is an affirmative defense to a violation of subsection (1)
13 of this section which the defendant must prove by a preponderance of
14 the evidence that the defendant consumed a sufficient quantity of
15 alcohol after the time of driving or being in physical control and
16 before the administration of an analysis of the person's breath or
17 blood to cause the defendant's alcohol concentration to be 0.02 or more
18 within two hours after driving or being in physical control. The court
19 shall not admit evidence of this defense unless the defendant notifies
20 the prosecution prior to the earlier of: (a) Seven days prior to
21 trial; or (b) the omnibus or pretrial hearing in the case of the
22 defendant's intent to assert the affirmative defense.

23 (3) Analyses of blood or breath samples obtained more than two
24 hours after the alleged driving or being in physical control may be
25 used as evidence that within two hours of the alleged driving or being
26 in physical control, a person had an alcohol concentration of 0.02 or
27 more in violation of subsection (1) of this section.

28 (4) A violation of this section is a misdemeanor.

29 **Sec. 9.** RCW 46.61.5152 and 1994 c 275 s 40 are each amended to
30 read as follows:

31 In addition to penalties that may be imposed under RCW
32 (~~46.61.5051, 46.61.5052, or 46.61.5053~~) 46.61.5055, the court may
33 require a person who is convicted of a violation of RCW 46.61.502 or
34 46.61.504 or who enters a deferred prosecution program under RCW
35 10.05.020 based on a violation of RCW 46.61.502 or 46.61.504, to attend
36 an educational program focusing on the emotional, physical, and
37 financial suffering of victims who were injured by persons convicted of
38 driving while under the influence of intoxicants.

1 NEW SECTION. **Sec. 10.** RCW 46.61.5057 and 1994 c 275 s 11 are each
2 repealed.

3 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and takes effect
6 July 1, 1997.

--- END ---