
SENATE BILL 6591

State of Washington

55th Legislature

1998 Regular Session

By Senators Horn, Haugen and Wood; by request of Department of Licensing

Read first time 01/22/98. Referred to Committee on Transportation.

1 AN ACT Relating to waiver of administrative alcohol or drug-related
2 hearing fees due to indigency; and amending RCW 46.20.308.

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

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

6 (1) Any person who operates a motor vehicle within this state is
7 deemed to have given consent, subject to the provisions of RCW
8 46.61.506, to a test or tests of his or her breath or blood for the
9 purpose of determining the alcohol concentration or presence of any
10 drug in his or her breath or blood if arrested for any offense where,
11 at the time of the arrest, the arresting officer has reasonable grounds
12 to believe the person had been driving or was in actual physical
13 control of a motor vehicle while under the influence of intoxicating
14 liquor or any drug or was in violation of RCW 46.61.503.

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

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

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

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

26 (3) Except as provided in this section, the test administered shall
27 be of the breath only. If an individual is unconscious or is under
28 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
29 or vehicular assault as provided in RCW 46.61.522, or if an individual
30 is under arrest for the crime of driving while under the influence of
31 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
32 results from an accident in which there has been serious bodily injury
33 to another person, a breath or blood test may be administered without
34 the consent of the individual so arrested.

35 (4) Any person who is dead, unconscious, or who is otherwise in a
36 condition rendering him or her incapable of refusal, shall be deemed
37 not to have withdrawn the consent provided by subsection (1) of this
38 section and the test or tests may be administered, subject to the

1 provisions of RCW 46.61.506, and the person shall be deemed to have
2 received the warnings required under subsection (2) of this section.

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

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

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

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

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

28 (d) Serve notice in writing that the marked license or permit, if
29 any, is a temporary license that is valid for sixty days from the date
30 of arrest or from the date notice has been given in the event notice is
31 given by the department following a blood test, or until the
32 suspension, revocation, or denial of the person's license, permit, or
33 privilege to drive is sustained at a hearing pursuant to subsection (8)
34 of this section, whichever occurs first. No temporary license is valid
35 to any greater degree than the license or permit that it replaces; and

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

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

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

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

14 (7) The department of licensing, upon the receipt of a sworn report
15 or report under a declaration authorized by RCW 9A.72.085 under
16 subsection (6)(e) of this section, shall suspend, revoke, deny, or
17 place in probationary status the person's license, permit, or privilege
18 to drive or any nonresident operating privilege, as provided in RCW
19 46.20.3101, such suspension, revocation, denial, or placement in
20 probationary status to be effective beginning sixty days from the date
21 of arrest or from the date notice has been given in the event notice is
22 given by the department following a blood test, or when sustained at a
23 hearing pursuant to subsection (8) of this section, whichever occurs
24 first.

25 (8) A person receiving notification under subsection (6)(b) of this
26 section may, within thirty days after the notice has been given,
27 request in writing a formal hearing before the department. The person
28 shall pay a fee of one hundred dollars as part of the request. If the
29 request is mailed, it must be postmarked within thirty days after
30 receipt of the notification. Upon timely receipt of such a request for
31 a formal hearing, including receipt of the required one hundred dollar
32 fee, the department shall afford the person an opportunity for a
33 hearing. The department may waive the required one hundred dollar fee
34 if the person is an indigent as defined in RCW 10.101.010. Except as
35 otherwise provided in this section, the hearing is subject to and shall
36 be scheduled and conducted in accordance with RCW 46.20.329 and
37 46.20.332. The hearing shall be conducted in the county of the arrest,
38 except that all or part of the hearing may, at the discretion of the
39 department, be conducted by telephone or other electronic means. The

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

37 A hearing officer shall conduct the hearing, may issue subpoenas
38 for the attendance of witnesses and the production of documents, and
39 shall administer oaths to witnesses. The hearing officer shall not

1 issue a subpoena for the attendance of a witness at the request of the
2 person unless the request is accompanied by the fee required by RCW
3 5.56.010 for a witness in district court. The sworn report or report
4 under a declaration authorized by RCW 9A.72.085 of the law enforcement
5 officer and any other evidence accompanying the report shall be
6 admissible without further evidentiary foundation and the
7 certifications authorized by the criminal rules for courts of limited
8 jurisdiction shall be admissible without further evidentiary
9 foundation. The person may be represented by counsel, may question
10 witnesses, may present evidence, and may testify. The department shall
11 order that the suspension, revocation, denial, or placement in
12 probationary status either be rescinded or sustained.

13 (9) If the suspension, revocation, denial, or placement in
14 probationary status is sustained after such a hearing, the person whose
15 license, privilege, or permit is suspended, revoked, denied, or placed
16 in probationary status has the right to file a petition in the superior
17 court of the county of arrest to review the final order of revocation
18 by the department in the same manner as an appeal from a decision of a
19 court of limited jurisdiction. The appellant must pay the costs
20 associated with obtaining the record of the hearing before the hearing
21 officer. The filing of the appeal does not stay the effective date of
22 the suspension, revocation, denial, or placement in probationary
23 status. A petition filed under this subsection must include the
24 petitioner's grounds for requesting review. Upon granting petitioner's
25 request for review, the court shall review the department's final order
26 of suspension, revocation, denial, or placement in probationary status
27 as expeditiously as possible. If judicial relief is sought for a stay
28 or other temporary remedy from the department's action, the court shall
29 not grant such relief unless the court finds that the appellant is
30 likely to prevail in the appeal and that without a stay the appellant
31 will suffer irreparable injury. If the court stays the suspension,
32 revocation, denial, or placement in probationary status it may impose
33 conditions on such stay.

34 (10) If a person whose driver's license, permit, or privilege to
35 drive has been or will be suspended, revoked, denied, or placed in
36 probationary status under subsection (7) of this section, other than as
37 a result of a breath test refusal, and who has not committed an offense
38 within the last five years for which he or she was granted a deferred
39 prosecution under chapter 10.05 RCW, petitions a court for a deferred

1 prosecution on criminal charges arising out of the arrest for which
2 action has been or will be taken under subsection (7) of this section,
3 the court may direct the department to stay any actual or proposed
4 suspension, revocation, denial, or placement in probationary status for
5 at least forty-five days but not more than ninety days. If the court
6 stays the suspension, revocation, denial, or placement in probationary
7 status, it may impose conditions on such stay. If the person is
8 otherwise eligible for licensing, the department shall issue a
9 temporary license, or extend any valid temporary license marked under
10 subsection (6) of this section, for the period of the stay. If a
11 deferred prosecution treatment plan is not recommended in the report
12 made under RCW 10.05.050, or if treatment is rejected by the court, or
13 if the person declines to accept an offered treatment plan, or if the
14 person violates any condition imposed by the court, then the court
15 shall immediately direct the department to cancel the stay and any
16 temporary marked license or extension of a temporary license issued
17 under this subsection.

18 A suspension, revocation, or denial imposed under this section,
19 other than as a result of a breath test refusal, shall be stayed if the
20 person is accepted for deferred prosecution as provided in chapter
21 10.05 RCW for the incident upon which the suspension, revocation, or
22 denial is based. If the deferred prosecution is terminated, the stay
23 shall be lifted and the suspension, revocation, or denial reinstated.
24 If the deferred prosecution is completed, the stay shall be lifted and
25 the suspension, revocation, or denial canceled.

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

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