
SENATE BILL 6686

State of Washington 57th Legislature

2002 Regular Session

By Senators Rossi, Roach, Oke and Sheahan

Read first time 01/26/2002. Referred to Committee on Judiciary.

1 AN ACT Relating to drivers convicted of alcohol offenses; amending
2 RCW 46.20.720 and 46.20.311; and reenacting and amending RCW 46.20.308.

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

4 **Sec. 1.** RCW 46.20.720 and 2001 c 247 s 1 are each amended to read
5 as follows:

6 (1) The court may order that after a period of suspension,
7 revocation, or denial of driving privileges, and for up to as long as
8 the court has jurisdiction, any person convicted of any offense
9 involving the use, consumption, or possession of alcohol while
10 operating a motor vehicle may drive only a motor vehicle equipped with
11 a functioning ignition interlock or other biological or technical
12 device.

13 (2) ~~((If—~~a)) The department shall require that, after any
14 applicable period of suspension, revocation, or denial of driving
15 privileges, a person may drive only a motor vehicle equipped with a
16 functioning ignition interlock or other biological or technical device
17 if the person is:

18 (a) Convicted of a violation of RCW 46.61.502 or 46.61.504 or an
19 equivalent local ordinance and it is:

1 ~~((a))~~ (i) The person's first conviction or a deferred prosecution
2 under chapter 10.05 RCW and his or her alcohol concentration was at
3 least 0.15, or by reason of the person's refusal to take a test offered
4 pursuant to RCW 46.20.308 there is no test result indicating the
5 person's alcohol concentration; ~~((or (b))~~)

6 (ii) The person's second or subsequent conviction; or ~~((c))~~

7 (iii) The person's first conviction and the person has a previous
8 deferred prosecution under chapter 10.05 RCW or it is a deferred
9 prosecution under chapter 10.05 RCW and the person has a previous
10 conviction~~((, the court shall order that after any applicable period of~~
11 ~~suspension, revocation, or denial of driving privileges, the person may~~
12 ~~drive)); or~~

13 (b) Restricted to driving only a motor vehicle equipped with a
14 functioning ignition interlock or other biological or technical device
15 under RCW 46.20.308. ~~((The requirement to drive only a motor vehicle~~
16 ~~equipped with a functioning ignition interlock or other biological or~~
17 ~~technical device may not be suspended.))~~ The ~~((court))~~ department may
18 waive the requirement for the use of such a device if ~~((the court makes~~
19 ~~a specific finding in writing))~~ it concludes that such devices are not
20 reasonably available in the local area. Nothing in this section may be
21 interpreted as entitling a person to more than one deferred
22 prosecution.

23 (3) In the case of a person under subsection (1) of this section,
24 the court shall establish a specific calibration setting at which the
25 ignition interlock or other biological or technical device will prevent
26 the motor vehicle from being started and the period of time that the
27 person shall be subject to the restriction. In the case of a person
28 under subsection (2) of this section, the ignition interlock or other
29 biological or technical device shall be calibrated to prevent the motor
30 vehicle from being started when the breath sample provided has an
31 alcohol concentration of 0.025 or more, and the period of time of the
32 restriction will be as follows:

33 (a) For a person (i) who is subject to RCW 46.61.5055 (1)(b), (2),
34 or (3), or who is subject to a deferred prosecution program under
35 chapter 10.05 RCW, or who is subject to restriction under RCW
36 46.20.308; and (ii) who has not previously been restricted under this
37 section, a period of ~~((not less than))~~ one year;

38 (b) For a person who has previously been restricted under (a) of
39 this subsection, a period of ~~((not less than))~~ five years;

1 (c) For a person who has previously been restricted under (b) of
2 this subsection, a period of (~~not less than~~) ten years.

3 For purposes of this section, "convicted" means being found guilty
4 of an offense or being placed on a deferred prosecution program under
5 chapter 10.05 RCW.

6 **Sec. 2.** RCW 46.20.308 and 1999 c 331 s 2 and 1999 c 274 s 2 are
7 each reenacted and amended to read as follows:

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

17 (2) The test or tests of breath shall be administered at the
18 direction of a law enforcement officer having reasonable grounds to
19 believe the person to have been driving or in actual physical control
20 of a motor vehicle within this state while under the influence of
21 intoxicating liquor or any drug or the person to have been driving or
22 in actual physical control of a motor vehicle while having alcohol in
23 a concentration in violation of RCW 46.61.503 in his or her system and
24 being under the age of twenty-one. However, in those instances where
25 the person is incapable due to physical injury, physical incapacity, or
26 other physical limitation, of providing a breath sample or where the
27 person is being treated in a hospital, clinic, doctor's office,
28 emergency medical vehicle, ambulance, or other similar facility in
29 which a breath testing instrument is not present or where the officer
30 has reasonable grounds to believe that the person is under the
31 influence of a drug, a blood test shall be administered by a qualified
32 person as provided in RCW 46.61.506(4). The officer shall inform the
33 person of his or her right to refuse the breath or blood test, and of
34 his or her right to have additional tests administered by any qualified
35 person of his or her choosing as provided in RCW 46.61.506. The
36 officer shall warn the driver that:

37 (a) His or her license, permit, or privilege to drive will be
38 revoked or denied if he or she refuses to submit to the test and, after

1 any period of revocation or denial, he or she will be restricted to
2 driving only a motor vehicle equipped with a functioning ignition
3 interlock or other biological or technical device;

4 (b) His or her license, permit, or privilege to drive will be
5 suspended, revoked, or denied and, after any period of suspension,
6 revocation, or denial, he or she will be restricted to driving only a
7 motor vehicle equipped with a functioning ignition interlock or other
8 biological or technical device if the test is administered and the test
9 indicates the alcohol concentration of the person's breath or blood is
10 0.08 or more, in the case of a person age twenty-one or over, or in
11 violation of RCW 46.61.502, 46.61.503, or 46.61.504 in the case of a
12 person under age twenty-one; and

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

15 (3) Except as provided in this section, the test administered shall
16 be of the breath only. If an individual is unconscious or is under
17 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
18 or vehicular assault as provided in RCW 46.61.522, or if an individual
19 is under arrest for the crime of driving while under the influence of
20 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
21 results from an accident in which there has been serious bodily injury
22 to another person, a breath or blood test may be administered without
23 the consent of the individual so arrested.

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

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

35 (6) If, after arrest and after the other applicable conditions and
36 requirements of this section have been satisfied, a test or tests of
37 the person's blood or breath is administered and the test results
38 indicate that the alcohol concentration of the person's breath or blood
39 is 0.08 or more if the person is age twenty-one or over, or is in

1 violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is
2 under the age of twenty-one, or the person refuses to submit to a test,
3 the arresting officer or other law enforcement officer at whose
4 direction any test has been given, or the department, where applicable,
5 if the arrest results in a test of the person's blood, shall:

6 (a) Serve notice in writing on the person on behalf of the
7 department of its intention to suspend, revoke, or deny the person's
8 license, permit, or privilege to drive and require the person to drive
9 only a motor vehicle equipped with a functioning ignition interlock or
10 other biological or technical device as required by subsection (~~(+7)~~)
11 (8) of this section;

12 (b) Serve notice in writing on the person on behalf of the
13 department of his or her right to a hearing, specifying the steps he or
14 she must take to obtain a hearing as provided by subsection (~~(+8)~~) (9)
15 of this section;

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

18 (d) Serve notice in writing that the marked license or permit, if
19 any, is a temporary license that is valid for sixty days from the date
20 of arrest or from the date notice has been given in the event notice is
21 given by the department following a blood test, or until the
22 suspension, revocation, or denial of the person's license, permit, or
23 privilege to drive is sustained at a hearing pursuant to subsection
24 (~~(+8)~~) (9) of this section, whichever occurs first. No temporary
25 license is valid to any greater degree than the license or permit that
26 it replaces; and

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

31 (i) That the officer had reasonable grounds to believe the arrested
32 person had been driving or was in actual physical control of a motor
33 vehicle within this state while under the influence of intoxicating
34 liquor or drugs, or both, or was under the age of twenty-one years and
35 had been driving or was in actual physical control of a motor vehicle
36 while having an alcohol concentration in violation of RCW 46.61.503;

37 (ii) That after receipt of the warnings required by subsection (2)
38 of this section the person refused to submit to a test of his or her
39 blood or breath, or a test was administered and the results indicated

1 that the alcohol concentration of the person's breath or blood was 0.08
2 or more if the person is age twenty-one or over, or was in violation of
3 RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age
4 of twenty-one; and

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

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

16 (8) The department of licensing, upon the receipt of a sworn report
17 or report under a declaration authorized by RCW 9A.72.085 under
18 subsection (6)(e) of this section, shall require that after any
19 applicable period of suspension, revocation, or denial of driving
20 privileges, the person may drive only a motor vehicle equipped with a
21 functioning ignition interlock or other biological or technical device
22 pursuant to RCW 46.20.720(3).

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

1 by the department following a blood test, unless otherwise agreed to by
2 the department and the person, in which case the action by the
3 department shall be stayed, and any valid temporary license marked
4 under subsection (6)(c) of this section extended, if the person is
5 otherwise eligible for licensing. For the purposes of this section,
6 the scope of the hearing shall cover the issues of whether a law
7 enforcement officer had reasonable grounds to believe the person had
8 been driving or was in actual physical control of a motor vehicle
9 within this state while under the influence of intoxicating liquor or
10 any drug or had been driving or was in actual physical control of a
11 motor vehicle within this state while having alcohol in his or her
12 system in a concentration in violation of RCW 46.61.503 and was under
13 the age of twenty-one, whether the person was placed under arrest, and
14 (a) whether the person refused to submit to the test or tests upon
15 request of the officer after having been informed that such refusal
16 would result in the revocation of the person's license, permit, or
17 privilege to drive and a requirement that the person drive only a motor
18 vehicle equipped with a functioning ignition interlock or other
19 biological or technical device, or (b) if a test or tests were
20 administered, whether the applicable requirements of this section were
21 satisfied before the administration of the test or tests, whether the
22 person submitted to the test or tests, or whether a test was
23 administered without express consent as permitted under this section,
24 and whether the test or tests indicated that the alcohol concentration
25 of the person's breath or blood was 0.08 or more if the person was age
26 twenty-one or over at the time of the arrest, or was in violation of
27 RCW 46.61.502, 46.61.503, or 46.61.504 if the person was under the age
28 of twenty-one at the time of the arrest. The sworn report or report
29 under a declaration authorized by RCW 9A.72.085 submitted by a law
30 enforcement officer is prima facie evidence that the officer had
31 reasonable grounds to believe the person had been driving or was in
32 actual physical control of a motor vehicle within this state while
33 under the influence of intoxicating liquor or drugs, or both, or the
34 person had been driving or was in actual physical control of a motor
35 vehicle within this state while having alcohol in his or her system in
36 a concentration in violation of RCW 46.61.503 and was under the age of
37 twenty-one and that the officer complied with the requirements of this
38 section.

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

18 ((+9)) (10) If the suspension, revocation, or denial and
19 requirement that the person drive only a motor vehicle equipped with a
20 functioning ignition interlock or other biological or technical device
21 is sustained after such a hearing, the person whose license, privilege,
22 or permit is suspended, revoked, or denied and who is required to drive
23 only a motor vehicle equipped with a functioning ignition interlock or
24 other biological or technical device has the right to file a petition
25 in the superior court of the county of arrest to review the final order
26 of revocation by the department in the same manner as an appeal from a
27 decision of a court of limited jurisdiction. Notice of appeal must be
28 filed within thirty days after the date the final order is served or
29 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
30 1.1, or other statutes or rules referencing de novo review, the appeal
31 shall be limited to a review of the record of the administrative
32 hearing. The appellant must pay the costs associated with obtaining
33 the record of the hearing before the hearing officer. The filing of
34 the appeal does not stay the effective date of the suspension,
35 revocation, or denial. A petition filed under this subsection must
36 include the petitioner's grounds for requesting review. Upon granting
37 petitioner's request for review, the court shall review the
38 department's final order of suspension, revocation, or denial and
39 requirement that the person drive only a motor vehicle equipped with a

1 functioning ignition interlock or other biological or technical device
2 as expeditiously as possible. The review must be limited to a
3 determination of whether the department has committed any errors of
4 law. The superior court shall accept those factual determinations
5 supported by substantial evidence in the record: (a) That were
6 expressly made by the department; or (b) that may reasonably be
7 inferred from the final order of the department. The superior court
8 may reverse, affirm, or modify the decision of the department or remand
9 the case back to the department for further proceedings. The decision
10 of the superior court must be in writing and filed in the clerk's
11 office with the other papers in the case. The court shall state the
12 reasons for the decision. If judicial relief is sought for a stay or
13 other temporary remedy from the department's action, the court shall
14 not grant such relief unless the court finds that the appellant is
15 likely to prevail in the appeal and that without a stay the appellant
16 will suffer irreparable injury. If the court stays the suspension,
17 revocation, or denial it may impose conditions on such stay.

18 ~~((+10))~~ (11) If a person whose driver's license, permit, or
19 privilege to drive has been or will be suspended, revoked, or denied
20 under subsection (7) of this section, other than as a result of a
21 breath or blood test refusal, and who has not committed an offense for
22 which he or she was granted a deferred prosecution under chapter 10.05
23 RCW, petitions a court for a deferred prosecution on criminal charges
24 arising out of the arrest for which action has been or will be taken
25 under subsection (7) of this section, the court may direct the
26 department to stay any actual or proposed suspension, revocation, or
27 denial for at least forty-five days but not more than ninety days. If
28 the court stays the suspension, revocation, or denial, it may impose
29 conditions on such stay. If the person is otherwise eligible for
30 licensing, the department shall issue a temporary license, or extend
31 any valid temporary license marked under subsection (6) of this
32 section, for the period of the stay. If a deferred prosecution
33 treatment plan is not recommended in the report made under RCW
34 10.05.050, or if treatment is rejected by the court, or if the person
35 declines to accept an offered treatment plan, or if the person violates
36 any condition imposed by the court, then the court shall immediately
37 direct the department to cancel the stay and any temporary marked
38 license or extension of a temporary license issued under this
39 subsection.

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

9 ~~((11))~~ (12) When it has been finally determined under the
10 procedures of this section that a nonresident's privilege to operate a
11 motor vehicle in this state has been suspended, revoked, or denied and,
12 after any applicable period of suspension, revocation, or denial of
13 driving privileges, the person may drive only a motor vehicle equipped
14 with a functioning ignition interlock or other biological or technical
15 device pursuant to RCW 46.20.720(3), the department shall give
16 information in writing of the action taken to the motor vehicle
17 administrator of the state of the person's residence and of any state
18 in which he or she has a license.

19 **Sec. 3.** RCW 46.20.311 and 2001 c 325 s 2 are each amended to read
20 as follows:

21 (1)(a) The department shall not suspend a driver's license or
22 privilege to drive a motor vehicle on the public highways for a fixed
23 period of more than one year, except as specifically permitted under
24 RCW 46.20.267, 46.20.342, or other provision of law. Except for a
25 suspension under RCW 46.20.267, 46.20.289, 46.20.291(5), 46.61.740, or
26 74.20A.320, whenever the license or driving privilege of any person is
27 suspended by reason of a conviction, a finding that a traffic
28 infraction has been committed, pursuant to chapter 46.29 RCW, or
29 pursuant to RCW 46.20.291 or 46.20.308, the suspension shall remain in
30 effect until the person gives and thereafter maintains proof of
31 financial responsibility for the future as provided in chapter 46.29
32 RCW. If the suspension is the result of a violation of RCW 46.61.502
33 or 46.61.504, the department shall determine the person's eligibility
34 for licensing based upon the reports provided by the alcoholism agency
35 or probation department designated under RCW 46.61.5056 and shall deny
36 reinstatement until enrollment and participation in an approved program
37 has been established and the person is otherwise qualified. If the
38 suspension is the result of a violation of RCW 46.61.502 or 46.61.504,

1 or is the result of administrative action under RCW 46.20.308, and the
2 person is required pursuant to RCW 46.20.720 to drive only a motor
3 vehicle equipped with a functioning ignition interlock or other
4 biological or technical device, the department shall determine the
5 person's eligibility for licensing based upon written verification by
6 an ignition interlock company doing business in the state of Washington
7 of installment of the required device on a vehicle owned and/or
8 operated by the person seeking reinstatement. Whenever the license or
9 driving privilege of any person is suspended as a result of
10 certification of noncompliance with a child support order under chapter
11 74.20A RCW or a residential or visitation order, the suspension shall
12 remain in effect until the person provides a release issued by the
13 department of social and health services stating that the person is in
14 compliance with the order.

15 (b)(i) The department shall not issue to the person a new,
16 duplicate, or renewal license until the person pays a reissue fee of
17 twenty dollars.

18 (ii) If the suspension is the result of a violation of RCW
19 46.61.502 or 46.61.504, or is the result of administrative action under
20 RCW 46.20.308, the reissue fee shall be one hundred fifty dollars.

21 (2)(a) Any person whose license or privilege to drive a motor
22 vehicle on the public highways has been revoked, unless the revocation
23 was for a cause which has been removed, is not entitled to have the
24 license or privilege renewed or restored until: (i) After the
25 expiration of one year from the date the license or privilege to drive
26 was revoked; (ii) after the expiration of the applicable revocation
27 period provided by RCW 46.20.3101 or 46.61.5055; (iii) after the
28 expiration of two years for persons convicted of vehicular homicide; or
29 (iv) after the expiration of the applicable revocation period provided
30 by RCW 46.20.265.

31 (b)(i) After the expiration of the appropriate period, the person
32 may make application for a new license as provided by law together with
33 a reissue fee in the amount of twenty dollars.

34 (ii) If the revocation is the result of a violation of RCW
35 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be one
36 hundred fifty dollars. If the revocation is the result of a violation
37 of RCW 46.61.502 or 46.61.504, the department shall determine the
38 person's eligibility for licensing based upon the reports provided by
39 the alcoholism agency or probation department designated under RCW

1 46.61.5056 and shall deny reissuance of a license, permit, or privilege
2 to drive until enrollment and participation in an approved program has
3 been established and the person is otherwise qualified. If the
4 revocation is the result of a violation of RCW 46.61.502 or 46.61.504,
5 or is the result of administrative action under RCW 46.20.308, and the
6 person is required pursuant to RCW 46.20.720 to drive only a motor
7 vehicle equipped with a functioning ignition interlock or other
8 biological or technical device, the department shall determine the
9 person's eligibility for licensing based upon written verification by
10 an ignition interlock company doing business in the state of Washington
11 of installment of the required device on a vehicle owned and/or
12 operated by the person applying for a new license.

13 (c) Except for a revocation under RCW 46.20.265, the department
14 shall not then issue a new license unless it is satisfied after
15 investigation of the driving ability of the person that it will be safe
16 to grant the privilege of driving a motor vehicle on the public
17 highways, and until the person gives and thereafter maintains proof of
18 financial responsibility for the future as provided in chapter 46.29
19 RCW. For a revocation under RCW 46.20.265, the department shall not
20 issue a new license unless it is satisfied after investigation of the
21 driving ability of the person that it will be safe to grant that person
22 the privilege of driving a motor vehicle on the public highways.

23 (3)(a) Whenever the driver's license of any person is suspended
24 pursuant to Article IV of the nonresident violators compact or RCW
25 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue
26 to the person any new or renewal license until the person pays a
27 reissue fee of twenty dollars.

28 (b) If the suspension is the result of a violation of the laws of
29 this or any other state, province, or other jurisdiction involving (i)
30 the operation or physical control of a motor vehicle upon the public
31 highways while under the influence of intoxicating liquor or drugs, or
32 (ii) the refusal to submit to a chemical test of the driver's blood
33 alcohol content, the reissue fee shall be one hundred fifty dollars.

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