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HOUSE BILL 2552

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State of Washington                      58th Legislature                      2004 Regular Session

By Representatives Schoesler, Lovick, Newhouse, Cox, Bush,  
Kristiansen, Hatfield, Holmquist, Eickmeyer and Buck

Read first time 01/15/2004. Referred to Committee on Judiciary.

1            AN ACT Relating to implied consent warnings; and reenacting and  
2 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 1999 c 331 s 2 and 1999 c 274 s 2 are  
5 each reenacted and amended to read 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 any drug or the person to have been driving or

1 in actual physical control of a motor vehicle while having alcohol in  
2 a concentration in violation of RCW 46.61.503 in his or her system and  
3 being under the age of twenty-one. However, in those instances where  
4 the person is incapable due to physical injury, physical incapacity, or  
5 other physical limitation, of providing a breath sample or where the  
6 person is being treated in a hospital, clinic, doctor's office,  
7 emergency medical vehicle, ambulance, or other similar facility in  
8 which a breath testing instrument is not present or where the officer  
9 has reasonable grounds to believe that the person is under the  
10 influence of a drug, a blood test shall be administered by a qualified  
11 person as provided in RCW 46.61.506(4). The officer shall inform the  
12 person of his or her right to refuse the breath or blood test, and of  
13 his or her right to have additional tests administered by any qualified  
14 person of his or her choosing as provided in RCW 46.61.506. The  
15 officer shall warn the driver that:

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

19 (b) His or her license, permit, or privilege to drive will be  
20 suspended, revoked, or denied for at least ninety days if the test is  
21 administered and the test indicates the alcohol concentration of the  
22 person's breath or blood is 0.08 or more, in the case of a person age  
23 twenty-one or over, or in violation of RCW 46.61.502, 46.61.503, or  
24 46.61.504 in the case of a person under age twenty-one; (~~and~~)

25 (c) His or her refusal to take the test may be used in a criminal  
26 trial; and

27 (d) He or she will not be eligible for an occupational driver's  
28 license if he or she refuses to submit to the test.

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, which arrest  
35 results from an accident in which there has been serious bodily injury  
36 to another person, a breath or blood test may be administered without  
37 the consent of the individual so arrested.

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

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

12 (6) If, after arrest and after the other applicable conditions and  
13 requirements of this section have been satisfied, a test or tests of  
14 the person's blood or breath is administered and the test results  
15 indicate that the alcohol concentration of the person's breath or blood  
16 is 0.08 or more if the person is age twenty-one or over, or is in  
17 violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is  
18 under the age of twenty-one, or the person refuses to submit to a test,  
19 the arresting officer or other law enforcement officer at whose  
20 direction any test has been given, or the department, where applicable,  
21 if the arrest results in a test of the person's blood, shall:

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

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

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

32 (d) Serve notice in writing that the marked license or permit, if  
33 any, is a temporary license that is valid for sixty days from the date  
34 of arrest or from the date notice has been given in the event notice is  
35 given by the department following a blood test, or until the  
36 suspension, revocation, or denial of the person's license, permit, or  
37 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 in violation of RCW 46.61.503;

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 0.08  
17 or more if the person is age twenty-one or over, or was in violation of  
18 RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age  
19 of twenty-one; and

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

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

1 hearing. The department may waive the required one hundred dollar fee  
2 if the person is an indigent as defined in RCW 10.101.010. Except as  
3 otherwise provided in this section, the hearing is subject to and shall  
4 be scheduled and conducted in accordance with RCW 46.20.329 and  
5 46.20.332. The hearing shall be conducted in the county of the arrest,  
6 except that all or part of the hearing may, at the discretion of the  
7 department, be conducted by telephone or other electronic means. The  
8 hearing shall be held within sixty days following the arrest or  
9 following the date notice has been given in the event notice is given  
10 by the department following a blood test, unless otherwise agreed to by  
11 the department and the person, in which case the action by the  
12 department shall be stayed, and any valid temporary license marked  
13 under subsection (6)(c) of this section extended, if the person is  
14 otherwise eligible for licensing. For the purposes of this section,  
15 the scope of the hearing shall cover the issues of whether a law  
16 enforcement officer had reasonable grounds to believe the person had  
17 been driving or was in actual physical control of a motor vehicle  
18 within this state while under the influence of intoxicating liquor or  
19 any drug or had been driving or was in actual physical control of a  
20 motor vehicle within this state while having alcohol in his or her  
21 system in a concentration in violation of RCW 46.61.503 and was under  
22 the age of twenty-one, whether the person was placed under arrest, and  
23 (a) whether the person refused to submit to the test or tests upon  
24 request of the officer after having been informed that such refusal  
25 would result in the revocation of the person's license, permit, or  
26 privilege to drive, or (b) if a test or tests were administered,  
27 whether the applicable requirements of this section were satisfied  
28 before the administration of the test or tests, whether the person  
29 submitted to the test or tests, or whether a test was administered  
30 without express consent as permitted under this section, and whether  
31 the test or tests indicated that the alcohol concentration of the  
32 person's breath or blood was 0.08 or more if the person was age twenty-  
33 one or over at the time of the arrest, or was in violation of RCW  
34 46.61.502, 46.61.503, or 46.61.504 if the person was under the age of  
35 twenty-one at the time of the arrest. The sworn report or report under  
36 a declaration authorized by RCW 9A.72.085 submitted by a law  
37 enforcement officer is prima facie evidence that the officer had  
38 reasonable grounds to believe the person had been driving or was in

1 actual physical control of a motor vehicle within this state while  
2 under the influence of intoxicating liquor or drugs, or both, or the  
3 person had been driving or was in actual physical control of a motor  
4 vehicle within this state while having alcohol in his or her system in  
5 a concentration in violation of RCW 46.61.503 and was under the age of  
6 twenty-one and that the officer complied with the requirements of this  
7 section.

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

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

1 department's final order of suspension, revocation, or denial as  
2 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) If a person whose driver's license, permit, or privilege to  
19 drive has been or will be suspended, revoked, or denied under  
20 subsection (7) of this section, other than as a result of a breath or  
21 blood test refusal, and who has not committed an offense for which he  
22 or she was granted a deferred prosecution under chapter 10.05 RCW,  
23 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

1 license or extension of a temporary license issued under this  
2 subsection.

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

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

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