

HOUSE BILL REPORT

SSB 5644

As Passed House:
April 11, 2005

Title: An act relating to driver's license suspensions.

Brief Description: Extending the stay on driver's license suspensions pending entry of a deferred prosecution.

Sponsors: By Senate Committee on Judiciary (originally sponsored by Senators Kline, Roach, Benton, Esser, Prentice, Shin, McAuliffe, Haugen, Fairley, Hargrove and Rasmussen).

Brief History:

Committee Activity:

Judiciary: 3/29/05, 3/30/05 [DP].

Floor Activity:

Passed House: 4/11/05, 96-0.

Brief Summary of Substitute Bill

- Expands the circumstances under which a person may seek a stay of the suspension or revocation of driving privileges pending a deferred prosecution for drunk driving.
- Extends the maximum period of such a stay.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Bill Perry (786-7123).

Background:

Under the Implied Consent Law, a driver must submit to a test of his or her blood or breath alcohol content (BAC) if he or she is arrested for driving while under the influence of intoxicating liquor (DUI). One of the ways the crime of DUI is committed is by having a BAC above the so-called "per se" limit. That is to say, if a person has a BAC above the per se limit, he or she is guilty of DUI with or without proof of intoxication or impairment. The BAC is measured in grams of alcohol per 210 liters of breath or per 100 milliliters of blood. For

persons age 21 or over, the per se limit is 0.08. For persons under age 21, the per se limit is 0.02.

Either a refusal or a failure of the BAC test will lead to an administrative suspension or revocation of the person's driver's license by the Department of Licensing (DOL). Either refusal or failure may, but need not, lead to criminal prosecution.

A person charged with DUI may seek a deferred prosecution. In order to be eligible for a deferred prosecution, a person must:

- allege that alcoholism, drug addiction, or mental problems caused the person to commit the offense;
- allege that treatment is necessary to prevent a reoccurrence;
- agree to pay for the expenses of diagnosis and treatment;
- stipulate to the admissibility and sufficiency of the facts in the police report;
 - acknowledge the admissibility of the stipulated facts in any trial on the charged offense; and
 - waive the right to testify, to have a speedy trial, to call witnesses, to present evidence, or to have a jury trial.

If the court grants a deferred prosecution the person will be ordered to undergo treatment in a two year program. A court may impose additional conditions on a deferred prosecution, including but not limited to requiring:

- attendance at self-help groups;
- complete abstinence from alcohol and drugs;
- periodic urinalysis or breath analysis; and
- maintenance of law abiding behavior.

In order to have the pending charges dismissed, the person must show proof not only that he or she has successfully completed the required two-year treatment program, but also that he or she has complied with any other conditions imposed by the court.

Failure in the treatment program or violation of the conditions of the deferral results in conviction on the charges against the person.

If a person is facing administrative suspension or revocation of his or her license for failure of the BAC test (but not for refusal of the test), and the person petitions a court for a deferred prosecution, the court may stay the DOL suspension or revocation of his or her license for up to 90 days.

Summary of Bill:

Changes are made with respect to the stay of an administrative license suspension or revocation for a person who has been charged with DUI and is seeking a deferred prosecution.

If a person who has failed a BAC test petitions for a deferred prosecution or notifies the DOL of his or her intent to petition for a deferred prosecution, the DOL must stay any

administrative suspension or revocation of the person's license. The stay will be for the shorter of 150 days after criminal charges are filed, or two years after the arrest.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill cures a situation that has developed since the Legislature has taken increasingly strong stands against drunk driving. The law assumes that prosecutors will file charges soon after arrest. Unfortunately, particularly in some counties, this sometimes does not happen. Deferred prosecution is a proven program that should be allowed to work. The bill will provide an incentive for offenders with drinking problems to get into treatment sooner.

Testimony Against: None.

Persons Testifying: Senator Kline, prime sponsor; and Geoffrey Burg, Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.