
SUBSTITUTE SENATE BILL 5644

State of Washington

59th Legislature

2005 Regular Session

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

READ FIRST TIME 02/28/05.

1 AN ACT Relating to driver's license suspensions; 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 2004 c 187 s 1 and 2004 c 95 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. Neither
15 consent nor this section precludes a police officer from obtaining a
16 search warrant for a person's breath or blood.

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

1 of a motor vehicle within this state while under the influence of
2 intoxicating liquor or any drug or the person to have been driving or
3 in actual physical control of a motor vehicle while having alcohol in
4 a concentration in violation of RCW 46.61.503 in his or her system and
5 being under the age of twenty-one. However, in those instances where
6 the person is incapable due to physical injury, physical incapacity, or
7 other physical limitation, of providing a breath sample or where the
8 person is being treated in a hospital, clinic, doctor's office,
9 emergency medical vehicle, ambulance, or other similar facility or
10 where the officer has reasonable grounds to believe that the person is
11 under the influence of a drug, a blood test shall be administered by a
12 qualified person as provided in RCW 46.61.506(5). The officer shall
13 inform the person of his or her right to refuse the breath or blood
14 test, and of his or her right to have additional tests administered by
15 any qualified person of his or her choosing as provided in RCW
16 46.61.506. The officer shall warn the driver, in substantially the
17 following language, that:

18 (a) If the driver refuses to take the test, the driver's license,
19 permit, or privilege to drive will be revoked or denied for at least
20 one year; and

21 (b) If the driver refuses to take the test, the driver's refusal to
22 take the test may be used in a criminal trial; and

23 (c) If the driver submits to the test and the test is administered,
24 the driver's license, permit, or privilege to drive will be suspended,
25 revoked, or denied for at least ninety days if the driver is age
26 twenty-one or over and the test indicates the alcohol concentration of
27 the driver's breath or blood is 0.08 or more, or if the driver is under
28 age twenty-one and the test indicates the alcohol concentration of the
29 driver's breath or blood is 0.02 or more, or if the driver is under age
30 twenty-one and the driver is in violation of RCW 46.61.502 or
31 46.61.504.

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

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

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

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

15 (6) If, after arrest and after the other applicable conditions and
16 requirements of this section have been satisfied, a test or tests of
17 the person's blood or breath is administered and the test results
18 indicate that the alcohol concentration of the person's breath or blood
19 is 0.08 or more if the person is age twenty-one or over, or 0.02 or
20 more if the person is under the age of twenty-one, or the person
21 refuses to submit to a test, the arresting officer or other law
22 enforcement officer at whose direction any test has been given, or the
23 department, where applicable, if the arrest results in a test of the
24 person's blood, shall:

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

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

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

35 (d) Serve notice in writing that the marked license or permit, if
36 any, is a temporary license that is valid for sixty days from the date
37 of arrest or from the date notice has been given in the event notice is
38 given by the department following a blood test, or until the

1 suspension, revocation, or denial of the person's license, permit, or
2 privilege to drive is sustained at a hearing pursuant to subsection (8)
3 of this section, whichever occurs first. No temporary license is valid
4 to any greater degree than the license or permit that it replaces; and

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

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

15 (ii) That after receipt of the warnings required by subsection (2)
16 of this section the person refused to submit to a test of his or her
17 blood or breath, or a test was administered and the results indicated
18 that the alcohol concentration of the person's breath or blood was 0.08
19 or more if the person is age twenty-one or over, or was 0.02 or more if
20 the person is under the age of twenty-one; and

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

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

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

1 fee, the department shall afford the person an opportunity for a
2 hearing. The department may waive the required one hundred dollar fee
3 if the person is an indigent as defined in RCW 10.101.010. Except as
4 otherwise provided in this section, the hearing is subject to and shall
5 be scheduled and conducted in accordance with RCW 46.20.329 and
6 46.20.332. The hearing shall be conducted in the county of the arrest,
7 except that all or part of the hearing may, at the discretion of the
8 department, be conducted by telephone or other electronic means. The
9 hearing shall be held within sixty days following the arrest or
10 following the date notice has been given in the event notice is given
11 by the department following a blood test, unless otherwise agreed to by
12 the department and the person, in which case the action by the
13 department shall be stayed, and any valid temporary license marked
14 under subsection (6)(c) of this section extended, if the person is
15 otherwise eligible for licensing. For the purposes of this section,
16 the scope of the hearing shall cover the issues of whether a law
17 enforcement officer had reasonable grounds to believe the person had
18 been driving or was in actual physical control of a motor vehicle
19 within this state while under the influence of intoxicating liquor or
20 any drug or had been driving or was in actual physical control of a
21 motor vehicle within this state while having alcohol in his or her
22 system in a concentration of 0.02 or more if the person was under the
23 age of twenty-one, whether the person was placed under arrest, and (a)
24 whether the person refused to submit to the test or tests upon request
25 of the officer after having been informed that such refusal would
26 result in the revocation of the person's license, permit, or privilege
27 to drive, or (b) if a test or tests were administered, whether the
28 applicable requirements of this section were satisfied before the
29 administration of the test or tests, whether the person submitted to
30 the test or tests, or whether a test was administered without express
31 consent as permitted under this section, and whether the test or tests
32 indicated that the alcohol concentration of the person's breath or
33 blood was 0.08 or more if the person was age twenty-one or over at the
34 time of the arrest, or 0.02 or more 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 of 0.02 or more and was under the age of twenty-one and
6 that the officer complied with the requirements of this section.

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

22 (9) If the suspension, revocation, or denial is sustained after
23 such a hearing, the person whose license, privilege, or permit is
24 suspended, revoked, or denied has the right to file a petition in the
25 superior court of the county of arrest to review the final order of
26 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 as

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

17 (10)(a) If a person whose driver's license, permit, or privilege to
18 drive has been or will be suspended, revoked, or denied under
19 subsection (7) of this section, other than as a result of a breath or
20 blood test refusal, and who has not committed an offense for which he
21 or she was granted a deferred prosecution under chapter 10.05 RCW,
22 petitions a court for a deferred prosecution on criminal charges
23 arising out of the arrest for which action has been or will be taken
24 under subsection (7) of this section, (~~the court may direct the~~
25 ~~department to stay any actual or proposed suspension, revocation, or~~
26 ~~denial for at least forty five days but not more than ninety days)) or
27 notifies the department of licensing of the intent to seek such a
28 deferred prosecution, then the license suspension or revocation shall
29 be stayed pending entry of the deferred prosecution. The stay shall
30 not be longer than one hundred fifty days after the date charges are
31 filed, or two years after the date of the arrest, whichever time period
32 is shorter. If the court stays the suspension, revocation, or denial,
33 it may impose conditions on such stay. If the person is otherwise
34 eligible for licensing, the department shall issue a temporary license,
35 or extend any valid temporary license marked under subsection (6) of
36 this section, for the period of the stay. If a deferred prosecution
37 treatment plan is not recommended in the report made under RCW
38 10.05.050, or if treatment is rejected by the court, or if the person~~

1 declines to accept an offered treatment plan, or if the person violates
2 any condition imposed by the court, then the court shall immediately
3 direct the department to cancel the stay and any temporary marked
4 license or extension of a temporary license issued under this
5 subsection.

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

14 (c) The provisions of (b) of this subsection relating to a stay of
15 a suspension, revocation, or denial and the cancellation of any
16 suspension, revocation, or denial do not apply to the suspension,
17 revocation, denial, or disqualification of a person's commercial
18 driver's license or privilege to operate a commercial motor vehicle.

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

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