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HOUSE BILL 2309

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State of Washington

52nd Legislature

1992 Regular Session

By Representative Inslee

Read first time 01/14/92. Referred to Committee on Judiciary.

1 AN ACT Relating to license revocation warnings for failure to  
2 submit to breath or blood alcohol tests; 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 1989 c 337 s 8 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 alcoholic content of his or her breath or  
10 blood if arrested for any offense where, at the time of the arrest, the  
11 arresting officer has reasonable grounds to believe the person had been  
12 driving or was in actual physical control of a motor vehicle while  
13 under the influence of intoxicating liquor.

1           (2) The test or tests of breath shall be administered at the  
2 direction of a law enforcement officer having reasonable grounds to  
3 believe the person to have been driving or in actual physical control  
4 of a motor vehicle within this state while under the influence of  
5 intoxicating liquor. However, in those instances where: (a) The  
6 person is incapable due to physical injury, physical incapacity, or  
7 other physical limitation, of providing a breath sample; or (b) as a  
8 result of a traffic accident the person is being treated for a medical  
9 condition in a hospital, clinic, doctor's office, or other similar  
10 facility in which a breath testing instrument is not present, a blood  
11 test shall be administered by a qualified person as provided in RCW  
12 46.61.506(4). The officer shall inform the person of his or her right  
13 to refuse the breath or blood test, and of his or her right to have  
14 additional tests administered by any qualified person of his or her  
15 choosing as provided in RCW 46.61.506. The officer shall warn the  
16 driver that (a) his or her privilege to drive will be revoked or denied  
17 if he or she refuses to submit to the test, and (b) that his or her  
18 refusal to take the test may be used in a criminal trial. The officer  
19 shall warn the driver that the person will not be entitled to have the  
20 license renewed or restored until after the expiration of one year in  
21 cases of revocation for the first refusal in five years to submit to  
22 the test, or after the expiration of two years in cases of the second  
23 refusal in five years to submit to the test.

24           (3) Except as provided in this section, the test administered shall  
25 be of the breath only. If an individual is unconscious or is under  
26 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
27 or vehicular assault as provided in RCW 46.61.522, or if an individual  
28 is under arrest for the crime of driving while under the influence of  
29 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest  
30 results from an accident in which another person has been injured and

1 there is a reasonable likelihood that such other person may die as a  
2 result of injuries sustained in the accident, a breath or blood test  
3 may be administered without 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) The department of licensing, upon the receipt of a sworn report  
16 of the law enforcement officer that the officer had reasonable grounds  
17 to believe the arrested person had been driving or was in actual  
18 physical control of a motor vehicle within this state while under the  
19 influence of intoxicating liquor and that the person had refused to  
20 submit to the test or tests upon the request of the law enforcement  
21 officer after being informed that refusal would result in the  
22 revocation of the person's privilege to drive, shall revoke the  
23 person's license or permit to drive or any nonresident operating  
24 privilege.

25 (7) Upon revoking the license or permit to drive or the nonresident  
26 operating privilege of any person, the department shall immediately  
27 notify the person involved in writing by personal service or by  
28 certified mail of its decision and the grounds therefor, and of the  
29 person's right to a hearing, specifying the steps he or she must take  
30 to obtain a hearing. Within fifteen days after the notice has been

1 given, the person may, in writing, request a formal hearing. Upon  
2 receipt of such request, the department shall afford the person an  
3 opportunity for a hearing as provided in RCW 46.20.329 and 46.20.332.  
4 The hearing shall be conducted in the county of the arrest. For the  
5 purposes of this section, the scope of such hearing shall cover the  
6 issues of whether a law enforcement officer had reasonable grounds to  
7 believe the person had been driving or was in actual physical control  
8 of a motor vehicle within this state while under the influence of  
9 intoxicating liquor, whether the person was placed under arrest, and  
10 whether the person refused to submit to the test or tests upon request  
11 of the officer after having been informed that such refusal would  
12 result in the revocation of the person's privilege to drive. The  
13 department shall order that the revocation either be rescinded or  
14 sustained. Any decision by the department revoking a person's driving  
15 privilege shall be stayed and shall not take effect while a formal  
16 hearing is pending as provided in this section or during the pendency  
17 of a subsequent appeal to superior court so long as there is no  
18 conviction for a moving violation or no finding that the person has  
19 committed a traffic infraction that is a moving violation during  
20 pendency of the hearing and appeal.

21 (8) If the revocation is sustained after such a hearing, the person  
22 whose license, privilege, or permit is revoked has the right to file a  
23 petition in the superior court of the county of arrest to review the  
24 final order of revocation by the department in the manner provided in  
25 RCW 46.20.334.

26 (9) 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 revoked, the department shall give information  
29 in writing of the action taken to the motor vehicle administrator of  
30 the state of the person's residence and of any state in which he or she

1 has a license.