
SENATE BILL 5245

State of Washington

53rd Legislature

1993 Regular Session

By Senators A. Smith, Quigley, Roach and Winsley; by request of Washington State Patrol

Read first time 01/19/93. Referred to Committee on Law & Justice.

1 AN ACT Relating to the time limitation on the analysis of blood and
2 breath alcohol; and amending RCW 46.61.502, 46.61.504, and 46.61.506.

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

4 **Sec. 1.** RCW 46.61.502 and 1987 c 373 s 2 are each amended to read
5 as follows:

6 A person is guilty of driving while under the influence of
7 intoxicating liquor or any drug if the person drives a vehicle within
8 this state (~~while~~), and:

9 (1) The person has 0.10 grams or more of alcohol per two hundred
10 ten liters of breath, at the time of analysis, as shown by analysis of
11 the person's breath made under RCW 46.61.506; or

12 (2) The person has 0.10 percent or more by weight of alcohol in the
13 person's blood at the time of analysis as shown by analysis of the
14 person's blood made under RCW 46.61.506; or

15 (3) The person is under the influence of or affected by
16 intoxicating liquor or any drug; or

17 (4) The person is under the combined influence of or affected by
18 intoxicating liquor and any drug.

1 The fact that any person charged with a violation of this section
2 is or has been entitled to use such drug under the laws of this state
3 shall not constitute a defense against any charge of violating this
4 section.

5 **Sec. 2.** RCW 46.61.504 and 1987 c 373 s 3 are each amended to read
6 as follows:

7 A person is guilty of being in actual physical control of a motor
8 vehicle while under the influence of intoxicating liquor or any drug if
9 the person has actual physical control of a vehicle within this state
10 (~~while~~), and:

11 (1) The person has 0.10 grams or more of alcohol per two hundred
12 ten liters of breath, at the time of analysis, as shown by analysis of
13 the person's breath made under RCW 46.61.506; or

14 (2) The person has 0.10 percent or more by weight of alcohol in the
15 person's blood at the time of analysis, as shown by analysis of the
16 person's blood made under RCW 46.61.506; or

17 (3) The person is under the influence of or affected by
18 intoxicating liquor or any drug; or

19 (4) The person is under the combined influence of or affected by
20 intoxicating liquor and any drug.

21 The fact that any person charged with a violation of this section
22 is or has been entitled to use such drug under the laws of this state
23 shall not constitute a defense against any charge of violating this
24 section. No person may be convicted under this section if, prior to
25 being pursued by a law enforcement officer, the person has moved the
26 vehicle safely off the roadway.

27 **Sec. 3.** RCW 46.61.506 and 1987 c 373 s 4 are each amended to read
28 as follows:

29 (1) Upon the trial of any civil or criminal action or proceeding
30 arising out of acts alleged to have been committed by any person while
31 driving or in actual physical control of a vehicle while under the
32 influence of intoxicating liquor or any drug, if the amount of alcohol
33 in the person's blood or breath at the time alleged as shown by
34 analysis of his blood or breath is less than 0.10 percent by weight of
35 alcohol in his blood or 0.10 grams of alcohol per two hundred ten
36 liters of the person's breath, it is evidence that may be considered

1 with other competent evidence in determining whether the person was
2 under the influence of intoxicating liquor or any drug.

3 (2) The breath analysis shall be based upon grams of alcohol per
4 two hundred ten liters of breath. The foregoing provisions of this
5 section shall not be construed as limiting the introduction of any
6 other competent evidence bearing upon the question whether the person
7 was under the influence of intoxicating liquor or any drug.

8 (3) Analysis of the person's blood or breath to be considered valid
9 under the provisions of this section or RCW 46.61.502 or 46.61.504
10 shall have been performed on samples obtained within two hours of the
11 alleged offense according to methods approved by the state toxicologist
12 and by an individual possessing a valid permit issued by the state
13 toxicologist for this purpose. The state toxicologist is directed to
14 approve satisfactory techniques or methods, to supervise the
15 examination of individuals to ascertain their qualifications and
16 competence to conduct such analyses, and to issue permits which shall
17 be subject to termination or revocation at the discretion of the state
18 toxicologist.

19 (4) When a blood test is administered under the provisions of RCW
20 46.20.308, the withdrawal of blood for the purpose of determining its
21 alcoholic content may be performed only by a physician, a registered
22 nurse, or a qualified technician. This limitation shall not apply to
23 the taking of breath specimens.

24 (5) The person tested may have a physician, or a qualified
25 technician, chemist, registered nurse, or other qualified person of his
26 own choosing administer one or more tests in addition to any
27 administered at the direction of a law enforcement officer. The
28 failure or inability to obtain an additional test by a person shall not
29 preclude the admission of evidence relating to the test or tests taken
30 at the direction of a law enforcement officer.

31 (6) Upon the request of the person who shall submit to a test or
32 tests at the request of a law enforcement officer, full information
33 concerning the test or tests shall be made available to him or his
34 attorney.

35 (7) If proven by a preponderance of the evidence, it is an
36 affirmative defense to a violation of RCW 46.61.502 and 46.61.504 that
37 the person consumed a sufficient quantity of alcohol after the time of
38 actual driving or being in actual physical control of a motor vehicle
39 and before the administration of an analysis of the person's breath or

1 blood made under this section to cause the defendant's alcohol
2 concentration to be .10 or more, as defined in RCW 46.61.502(1) and (2)
3 and 46.61.504(1) and (2). However, evidence of this defense may not be
4 admitted unless notice is given to the prosecution prior to the omnibus
5 or pretrial hearing in the matter.

6 (8) Subsections (1) through (7) of this section do not limit the
7 introduction of other competent evidence bearing upon the question of
8 whether or not the person was under the influence of intoxicating
9 liquor or any drug, pursuant to an analysis of the person's breath or
10 blood made under this section and defined in RCW 46.61.502(1) and (2)
11 including analyses of samples that are obtained more than two hours
12 after the alleged driving or actual physical control of a motor
13 vehicle.

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