

HOUSE BILL REPORT

SSB 5141

As Passed House - Amended:

April 7, 1995

Title: An act relating to offenses involving alcohol or drugs.

Brief Description: Revising provisions relating to offenses involving alcohol or drugs.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Smith, Rasmussen, Quigley, C. Anderson and Bauer).

Brief History:

Committee Activity:

Law & Justice: 3/28/95, 3/29/95 [DPA].

Floor Activity:

Amended.

Passed House: 4/7/95, 96-0.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended. Signed by 16 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Campbell; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Smith; Thibaudeau and Veloria.

Staff: Bill Perry (786-7123).

Background: The crime of driving while under the influence (DUI) can be committed in either of two ways. A person who is "under the influence" may be convicted of the crime regardless of the amount of alcohol shown to be in his or her system by a blood or breath test. However, the more common way in which a person commits the offense of drunk driving is by what is called a "per se" violation.

A driver with more than a legally prescribed amount of alcohol in his or her system is said to have committed a "per se" violation. That is, the offense is purely a matter of alcohol concentration and is not related to the extent of apparent impairment the driver may have. In most DUI cases, blood or breath alcohol concentration (BAC) evidence is available and is presented to show a per se offense. A BAC of "0.10" or more is a per se violation. (The 0.10 means either 0.10 grams of alcohol per 210

liters of breath, or 0.10 percent by weight of alcohol in the blood. By virtue of the so-called partition ratio, these breath and blood amounts are taken to be equivalent.)

A person who has been lawfully stopped for DUI may be subject to administrative action and criminal prosecution.

ADMINISTRATIVE ACTION. A person who registers 0.10 or more on a BAC test is subject to the following administrative actions: For a first such per se violation, issuance of a probationary license which allows the person to drive normally, but which has penalty consequences if the person is subsequently convicted for another drunk driving offense; and for a second per se violation within five years, revocation for two years. A suspension or revocation will be stayed if the person is granted a deferred prosecution on criminal charges arising out of the same offense that triggered the administrative action. An administrative suspension or revocation runs consecutively to any license suspension or revocation imposed as part of a criminal conviction arising out of the same incident.

Administrative suspension or revocation also applies to any minor driver with a BAC of 0.02 or higher. For purposes of this provision a "minor" is anyone under the age of 21. Unlike the 0.10 per se standard in the drunk driving law, the 0.02 standard is not a criminal one, although another law (the "minor in possession" law) makes it generally illegal for a minor to have alcohol in his or her system in any quantity, whether the minor is driving or not. The administrative actions for a violation of the 0.02 standard by a minor are as follows: For a first violation, suspension for 90 days; and for a second violation within five years, revocation for one year or until age 21, whichever is longer.

Under the Implied Consent Law, each licensed driver has agreed to take a test of his or her alcohol concentration whenever a police officer has reasonable grounds to believe the driver has committed DUI. Refusal to take a BAC test is not, in itself, a crime. However, a refusal results in administrative loss of driving privileges, regardless of whether criminal DUI charges are filed. The administrative actions for violating the Implied Consent Law are as follows: For a first refusal, revocation for one year; and for a second refusal within five years, revocation for two years.

As part of the Implied Consent Law, an arresting officer is required to give a driver certain warnings about the consequences of refusing to take a BAC test. At least some trial courts have held that in light of changes made to the drunk driving law in 1994, these warnings are no longer adequate because there are now administrative consequences for taking the test and failing it. Questions have also been raised about the "reasonable grounds" for arrest standard and whether it is equivalent to a requirement for "probable cause." Probable cause has been said to exist "where the totality of the facts and circumstances known to the officers at the time of arrest

would warrant a reasonably cautious person to believe an offense is being committed."

A variety of provisions apply to the administrative suspension or revocation of drivers' licenses. These provisions relate to how and when a person may request a hearing before the Department of Licensing (DOL), what must be proved in a contested case, and how a DOL administrative action may be appealed. There are differences among these provisions depending on whether the action is based on an Implied Consent Law refusal, a per se violation of the 0.10 standard, or a violation by a minor of the 0.02 standard. For instance, an appeal from a revocation under the Implied Consent Law is to superior court on a "do novo" basis, which means that the court will hear the case anew as though it were a new trial. On the other hand, appeals to superior courts from administrative actions for per se violations are "on the record," which means that the court considers only the record of the DOL hearing. Except in the case of a minor who violates the 0.02 standard, a person subject to administrative action must pay a fee of \$100 in order to request a hearing before DOL.

CRIMINAL PENALTIES. A person convicted of DUI is subject to jail time, fines, loss of driving privileges and five years of having his or her driving privileges in a probationary status. The severity of criminal penalties depends on both the prior DUI history of the person and the level of any BAC reading on the current offense.

If a person is convicted of DUI for the first time within five years and his or her driver's license is not in a probationary, suspended, or revoked status, the following apply if the person's BAC is at least 0.10 but less than 0.15, or if there is no BAC evidence for reason other than the person's refusal to take a BAC test:

- o Imprisonment for not less than one day nor more than one year;
- o A fine of \$350 to \$5,000; and
- o A suspension of his or her driver's license for 90 days. The court may suspend all or part of the 90 days upon a plea agreement by the prosecutor and the defendant. (This provision has been the subject of criticism as an invalid delegation of judicial authority to the prosecutor.)

If a person is convicted of DUI for the first time within five years and his or her driver's license is not in a probationary, suspended, or revoked status, the following apply if the person's BAC is 0.15 or more, or if there is no BAC evidence because of the person's refusal to take a BAC test:

- o Imprisonment for not less than two days nor more than one year;

- o A fine of \$500 to \$5,000; and
- o Suspension of his or her driver's license for 120 days. In addition, the person's driver's license is considered to be in a probationary status for five years.

If a person is convicted of DUI for a second time within five years, or if the person's license was suspended at the time of the offense, the following apply:

- o Imprisonment for not less than 90 days nor more than one year;
- o A fine of \$750 to \$5,000; and
- o Revocation of his or her driver's license for two years.

A person who has not been convicted of DUI within the previous five years, but whose driver's license is in a probationary status when he or she violates the DUI law and who has an alcohol concentration of at least 0.10, but less than 0.15, will be punished by imprisonment for not less than seven days nor more than one year, a fine of \$500 to \$5,000, and suspension of his or her driver's license for one year.

A person who has not been convicted of DUI within the previous five years, but whose driver's license is in a probationary status when he or she violates the DUI law and who has an alcohol concentration of 0.15 or more, or who refuses to submit to the BAC test will be punished by imprisonment for 10 days to one year, a fine of \$750 to \$5000 and revocation of his or her driver's license for 450 days.

In addition to the fines prescribed in the DUI law, a person convicted of DUI is subject to other assessments, including a fee of \$125 that goes in part to the state toxicology laboratory for blood testing and to the Washington State Patrol breath testing program. This fee is scheduled to expire on July 1, 1995.

Summary of Bill: The state's DUI law is amended both with respect to administrative actions and criminal prosecutions.

ADMINISTRATIVE ACTION. Various changes are made regarding the administrative suspension or revocation of driving privileges of a person who violates the Implied Consent Law by refusing a BAC test, or who takes and fails a BAC test. The procedural requirements for requesting, conducting, and appealing an administrative hearing on an Implied Consent Law violation, or a per se violation of the 0.10 BAC standard, or a per se violation of the 0.02 BAC standard for minors, are consolidated into a single provision.

The consolidated administrative procedures for handling these violations include the following:

- o Additional warnings must be provided for persons under the Implied Consent Law. In addition to being warned that refusal to take a BAC test will result in administrative license action, a person must be warned that taking the test and failing it will also result in administrative action.
- o The requirement that an arresting officer must issue a temporary license is replaced with a provision that allows the officer to mark the license so that it will serve as a temporary 60-day license.
- o A person has 30 days from arrest to request a hearing before DOL. DOL has 60 days from arrest to conduct the hearing if one is requested. A person requesting a hearing need not pay a fee. However, a \$100 fee is required from a person appealing the outcome of the hearing.
- o A hearing is to be conducted in the county of arrest unless DOL chooses to conduct the hearing by phone or other electronic means.
- o The arresting officer's sworn report is prima facie evidence that the officer had reasonable grounds to make an arrest and that the officer complied with applicable requirements, such as giving the necessary warning.
- o Except in the case of a refusal to take a BAC test, a person's temporary driving privileges may be extended by up to 90 days if the person petitions for a deferred prosecution of criminal charges arising out of the same incident. Except for refusal cases, obtaining a deferred prosecution will stay the administrative suspension or revocation.
- o All appeals from a DOL administrative suspension or revocation are "on the record."
- o An appeal from a DOL administrative action does not stay the action pending the appeal, unless the court finds that the appellant is likely to prevail on appeal and that failure to grant a stay will result in irreparable harm to the appellant.

The following administrative license actions apply to Implied Consent Law refusals and administrative per se violations:

- o Refusals. For a first refusal, revocation for one year; for a second refusal within five years (or a first refusal when there has been a drunk driving incident in the previous five years), revocation for two years or until age 21. (Administrative revocations for refusals run consecutively to any criminal suspension or revocation.)

- o Administrative per se for BACs over 0.10. For a first violation, probationary license status for five years; for a second violation within five years, revocation for two years.
- o Administrative per se for minors with BACs over 0.02. For a first violation, suspension for 90 days; for a second violation within five years, revocation for one year or until age 21, whichever is longer.

CRIMINAL PENALTIES. The criminal penalties for DUI are changed. Penalty differentials for probationary status are eliminated.

For a first DUI within five years, the following apply:

- o Imprisonment for not less than one day nor more than one year (not less than two days with a BAC of .15);
- o A fine of not less than \$350 nor more than \$5,000 (not less than \$500 with a BAC of .15); and
- o Suspension of the driver's license for 90 days. The judge may suspend all or part of this 90-day period of suspension (automatic suspension for 120 days with a BAC of .15).

For a second DUI within five years, the following apply:

- o Imprisonment for not less than 30 days nor more than one year (not less than 45 days with a BAC of .15);
- o A fine of not less than \$500 nor more than \$5,000 (not less than \$750 with a BAC of .15); and
- o Revocation of the driver's license for one year (revocation for 450 days with a BAC of .15).

For a third DUI within five years, the following apply:

- o Imprisonment for not less than 90 days nor more than one year (not less than 120 days with a BAC of .15);
- o A fine of not less than \$1,000 nor more than \$5,000 (not less than \$1,500 with a BAC of .15); and
- o Revocation of the driver's license for two years (revocation for three years with a BAC of .15).

MISCELLANEOUS.

Prosecutors are prohibited from plea bargaining DUI charges to other less serious charges.

Refusal to take a BAC test is made a gross misdemeanor criminal offense.

An arresting officer is given authority under the Implied Consent Law to request a blood test for drugs when there are reasonable grounds to believe the driver is under the influence of drugs.

For purposes of law enforcement decisions regarding DUI arrests, the phrase "reasonable grounds" means "probable cause."

The July 1, 1995 termination date for the \$125 blood and breath test fee is repealed.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Bill: The bill takes effect September 1, 1995, except for Sections 23 and 14 which deal with the extension of the \$125 fee for blood and breath testing and which take effect immediately.

Testimony For: The bill as amended will help reduce the uncertainty and turmoil in the courts over the constitutionality of several provisions of the current law. The bill as amended appropriately focuses on high BAC and repeat offenders, while preserving a proven program of deferred prosecution.

Testimony Against: The bill as amended does not go far enough. The per se BAC level should be dropped to .08, a level at which everyone is impaired. Administrative license suspensions should apply to first-time offenders. There has never been a repeat offender who wasn't a first-time offender at one time.

Testified: Lisa Eshelman, Margot Wyatt, Kim Belton, Kris and Stephen Huston, Mothers Against Drunk Drivers (pro as passed the Senate); Gene Andre, Chairman, Mothers Against Drunk Drivers, Washington State Chapter (pro as passed the Senate); Jim Bostad, President, Mothers Against Drunk Drivers, King County Chapter (pro as passed the Senate); Dennis Kempfer, Mothers Against Drunk Drivers, Grays Harbor County Chapter (pro as passed the Senate); Shannon Rhea, Mothers Against Drunk Drivers, Whatcom County Chapter (pro as passed the Senate); Bonnie West and Gregory Bizzell, Mothers Against Drunk Drivers, Spokane County Chapter (pro as passed the Senate); Barbara Norris, Mothers Against Drunk Drivers, Cowlitz County Chapter (pro as passed the Senate); Loie Lennon, citizen

(pro as passed the Senate); Peggy Bishop, citizen (pro as amended); Mark Sidran, Seattle City Attorney (pro as passed the Senate); Tom Miller, Washington Association of Sheriffs and Police Chiefs (pro); Jim Justin, Association of Washington Cities (pro; con on statewide .08 BAC level); Steve Lind, Washington Traffic Safety Commission (pro); Tim Erickson, Washington State Patrol (pro); Jeff Sullivan, Yakima Prosecuting Attorney's Office (pro as passed the Senate); Mark Sterk, Spokane Police Department (pro in part); Salvatore J. Faggiano, Spokane City Prosecutor (pro in part); Judges Robert McBeth and John McCarthy, Washington Municipal and District Court Judges Association (pro as amended); Judge Ron Kessler, Seattle Municipal Court Judges (pro with changes); Linda Grant, Association of Alcoholism and Addictions Programs (with concerns); Tom Armstrong, Lakeside (with concerns); Margaret Jones, Bothell Women's Treatment Program (with concerns); Diane Hall, Chemical Dependency Professionals of Washington (con as passed the Senate); Dave Chapman, Washington Association of Criminal Defense Attorneys (con as passed the Senate); and Paul Tribble, citizen (con as passed the Senate).