

2 2SHB 3070 - S AMD - 883  
3 By Senator Roach

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5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are  
8 each reenacted and amended to read as follows:

9 (1) A person who is convicted of a violation of RCW 46.61.502 or  
10 46.61.504 and who has no prior offense within ((five)) seven years  
11 shall be punished as follows:

12 (a) In the case of a person whose alcohol concentration was less  
13 than 0.15, or for whom for reasons other than the person's refusal to  
14 take a test offered pursuant to RCW 46.20.308 there is no test result  
15 indicating the person's alcohol concentration:

16 (i) By imprisonment for not less than one day nor more than one  
17 year. Twenty-four consecutive hours of the imprisonment may not be  
18 suspended or deferred unless the court finds that the imposition of  
19 this mandatory minimum sentence would impose a substantial risk to the  
20 offender's physical or mental well-being. Whenever the mandatory  
21 minimum sentence is suspended or deferred, the court shall state in  
22 writing the reason for granting the suspension or deferral and the  
23 facts upon which the suspension or deferral is based; and

24 (ii) By a fine of not less than three hundred fifty dollars nor  
25 more than five thousand dollars. Three hundred fifty dollars of the  
26 fine may not be suspended or deferred unless the court finds the  
27 offender to be indigent; and

28 (iii) By suspension of the offender's license or permit to drive,  
29 or suspension of any nonresident privilege to drive, for a period of  
30 ninety days. The period of license, permit, or privilege suspension  
31 may not be suspended. The court shall notify the department of  
32 licensing of the conviction, and upon receiving notification of the  
33 conviction the department shall suspend the offender's license, permit,  
34 or privilege; or

35 (b) In the case of a person whose alcohol concentration was at  
36 least 0.15, or for whom by reason of the person's refusal to take a

1 test offered pursuant to RCW 46.20.308 there is no test result  
2 indicating the person's alcohol concentration:

3 (i) By imprisonment for not less than two days nor more than one  
4 year. Two consecutive days of the imprisonment may not be suspended or  
5 deferred unless the court finds that the imposition of this mandatory  
6 minimum sentence would impose a substantial risk to the offender's  
7 physical or mental well-being. Whenever the mandatory minimum sentence  
8 is suspended or deferred, the court shall state in writing the reason  
9 for granting the suspension or deferral and the facts upon which the  
10 suspension or deferral is based; and

11 (ii) By a fine of not less than five hundred dollars nor more than  
12 five thousand dollars. Five hundred dollars of the fine may not be  
13 suspended or deferred unless the court finds the offender to be  
14 indigent; and

15 (iii) By revocation of the offender's license or permit to drive,  
16 or suspension of any nonresident privilege to drive, for a period of  
17 one year. The period of license, permit, or privilege suspension may  
18 not be suspended. The court shall notify the department of licensing  
19 of the conviction, and upon receiving notification of the conviction  
20 the department shall suspend the offender's license, permit, or  
21 privilege.

22 (2) A person who is convicted of a violation of RCW 46.61.502 or  
23 46.61.504 and who has one prior offense within ((five)) seven years  
24 shall be punished as follows:

25 (a) In the case of a person whose alcohol concentration was less  
26 than 0.15, or for whom for reasons other than the person's refusal to  
27 take a test offered pursuant to RCW 46.20.308 there is no test result  
28 indicating the person's alcohol concentration:

29 (i) By imprisonment for not less than thirty days nor more than one  
30 year. Thirty days of the imprisonment may not be suspended or deferred  
31 unless the court finds that the imposition of this mandatory minimum  
32 sentence would impose a substantial risk to the offender's physical or  
33 mental well-being. Whenever the mandatory minimum sentence is  
34 suspended or deferred, the court shall state in writing the reason for  
35 granting the suspension or deferral and the facts upon which the  
36 suspension or deferral is based; and

37 (ii) By a fine of not less than five hundred dollars nor more than  
38 five thousand dollars. Five hundred dollars of the fine may not be

1 suspended or deferred unless the court finds the offender to be  
2 indigent; and

3 (iii) By revocation of the offender's license or permit to drive,  
4 or suspension of any nonresident privilege to drive, for a period of  
5 two years. The period of license, permit, or privilege revocation may  
6 not be suspended. The court shall notify the department of licensing  
7 of the conviction, and upon receiving notification of the conviction  
8 the department shall revoke the offender's license, permit, or  
9 privilege; or

10 (b) In the case of a person whose alcohol concentration was at  
11 least 0.15, or for whom by reason of the person's refusal to take a  
12 test offered pursuant to RCW 46.20.308 there is no test result  
13 indicating the person's alcohol concentration:

14 (i) By imprisonment for not less than forty-five days nor more than  
15 one year. Forty-five days of the imprisonment may not be suspended or  
16 deferred unless the court finds that the imposition of this mandatory  
17 minimum sentence would impose a substantial risk to the offender's  
18 physical or mental well-being. Whenever the mandatory minimum sentence  
19 is suspended or deferred, the court shall state in writing the reason  
20 for granting the suspension or deferral and the facts upon which the  
21 suspension or deferral is based; and

22 (ii) By a fine of not less than seven hundred fifty dollars nor  
23 more than five thousand dollars. Seven hundred fifty dollars of the  
24 fine may not be suspended or deferred unless the court finds the  
25 offender to be indigent; and

26 (iii) By revocation of the offender's license or permit to drive,  
27 or suspension of any nonresident privilege to drive, for a period of  
28 nine hundred days. The period of license, permit, or privilege  
29 revocation may not be suspended. The court shall notify the department  
30 of licensing of the conviction, and upon receiving notification of the  
31 conviction the department shall revoke the offender's license, permit,  
32 or privilege.

33 (3) A person who is convicted of a violation of RCW 46.61.502 or  
34 46.61.504 and who has two or more prior offenses within ~~((five))~~ seven  
35 years shall be punished as follows:

36 (a) In the case of a person whose alcohol concentration was less  
37 than 0.15, or for whom for reasons other than the person's refusal to  
38 take a test offered pursuant to RCW 46.20.308 there is no test result  
39 indicating the person's alcohol concentration:

1 (i) By imprisonment for not less than ninety days nor more than one  
2 year. Ninety days of the imprisonment may not be suspended or deferred  
3 unless the court finds that the imposition of this mandatory minimum  
4 sentence would impose a substantial risk to the offender's physical or  
5 mental well-being. Whenever the mandatory minimum sentence is  
6 suspended or deferred, the court shall state in writing the reason for  
7 granting the suspension or deferral and the facts upon which the  
8 suspension or deferral is based; and

9 (ii) By a fine of not less than one thousand dollars nor more than  
10 five thousand dollars. One thousand dollars of the fine may not be  
11 suspended or deferred unless the court finds the offender to be  
12 indigent; and

13 (iii) By revocation of the offender's license or permit to drive,  
14 or suspension of any nonresident privilege to drive, for a period of  
15 three years. The period of license, permit, or privilege revocation  
16 may not be suspended. The court shall notify the department of  
17 licensing of the conviction, and upon receiving notification of the  
18 conviction the department shall revoke the offender's license, permit,  
19 or privilege; or

20 (b) In the case of a person whose alcohol concentration was at  
21 least 0.15, or for whom by reason of the person's refusal to take a  
22 test offered pursuant to RCW 46.20.308 there is no test result  
23 indicating the person's alcohol concentration:

24 (i) By imprisonment for not less than one hundred twenty days nor  
25 more than one year. One hundred twenty days of the imprisonment may  
26 not be suspended or deferred unless the court finds that the imposition  
27 of this mandatory minimum sentence would impose a substantial risk to  
28 the offender's physical or mental well-being. Whenever the mandatory  
29 minimum sentence is suspended or deferred, the court shall state in  
30 writing the reason for granting the suspension or deferral and the  
31 facts upon which the suspension or deferral is based; and

32 (ii) By a fine of not less than one thousand five hundred dollars  
33 nor more than five thousand dollars. One thousand five hundred dollars  
34 of the fine may not be suspended or deferred unless the court finds the  
35 offender to be indigent; and

36 (iii) By revocation of the offender's license or permit to drive,  
37 or suspension of any nonresident privilege to drive, for a period of  
38 four years. The period of license, permit, or privilege revocation may  
39 not be suspended. The court shall notify the department of licensing

1 of the conviction, and upon receiving notification of the conviction  
2 the department shall revoke the offender's license, permit, or  
3 privilege.

4 (4) In exercising its discretion in setting penalties within the  
5 limits allowed by this section, the court shall particularly consider  
6 whether the person's driving at the time of the offense was responsible  
7 for injury or damage to another or another's property.

8 (5) An offender punishable under this section is subject to the  
9 alcohol assessment and treatment provisions of RCW 46.61.5056.

10 (6) After expiration of any period of suspension or revocation of  
11 the offender's license, permit, or privilege to drive required by this  
12 section, the department shall place the offender's driving privilege in  
13 probationary status pursuant to RCW 46.20.355.

14 (7)(a) In addition to any nonsuspendable and nondeferrable jail  
15 sentence required by this section, whenever the court imposes less than  
16 one year in jail, the court shall also suspend but shall not defer a  
17 period of confinement for a period not exceeding two years. The court  
18 shall impose conditions of probation that include: (i) Not driving a  
19 motor vehicle within this state without a valid license to drive and  
20 proof of financial responsibility for the future; (ii) not driving a  
21 motor vehicle within this state while having an alcohol concentration  
22 of 0.08 or more within two hours after driving; and (iii) not refusing  
23 to submit to a test of his or her breath or blood to determine alcohol  
24 concentration upon request of a law enforcement officer who has  
25 reasonable grounds to believe the person was driving or was in actual  
26 physical control of a motor vehicle within this state while under the  
27 influence of intoxicating liquor. The court may impose conditions of  
28 probation that include nonrepetition, installation of an ignition  
29 interlock or other biological or technical device on the probationer's  
30 motor vehicle, alcohol or drug treatment, supervised probation, or  
31 other conditions that may be appropriate. The sentence may be imposed  
32 in whole or in part upon violation of a condition of probation during  
33 the suspension period.

34 (b) For each violation of mandatory conditions of probation under  
35 (a)(i) and (ii) or (a)(i) and (iii) of this subsection, the court shall  
36 order the convicted person to be confined for thirty days, which shall  
37 not be suspended or deferred.

38 (c) For each incident involving a violation of a mandatory  
39 condition of probation imposed under this subsection, the license,

1 permit, or privilege to drive of the person shall be suspended by the  
2 court for thirty days or, if such license, permit, or privilege to  
3 drive already is suspended, revoked, or denied at the time the finding  
4 of probation violation is made, the suspension, revocation, or denial  
5 then in effect shall be extended by thirty days. The court shall  
6 notify the department of any suspension, revocation, or denial or any  
7 extension of a suspension, revocation, or denial imposed under this  
8 subsection.

9 (8)(a) A "prior offense" means any of the following:

10 (i) A conviction for a violation of RCW 46.61.502 or an equivalent  
11 local ordinance;

12 (ii) A conviction for a violation of RCW 46.61.504 or an equivalent  
13 local ordinance;

14 (iii) A conviction for a violation of RCW 46.61.520 committed while  
15 under the influence of intoxicating liquor or any drug;

16 (iv) A conviction for a violation of RCW 46.61.522 committed while  
17 under the influence of intoxicating liquor or any drug;

18 (v) A conviction for a violation of RCW 46.61.5249 or an equivalent  
19 local ordinance, if the conviction is the result of a charge that was  
20 originally filed as a violation of RCW 46.61.502 or 46.61.504, or an  
21 equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

22 (vi) An out-of-state conviction for a violation that would have  
23 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this  
24 subsection if committed in this state;

25 (vii) A deferred prosecution under chapter 10.05 RCW granted in a  
26 prosecution for a violation of RCW 46.61.502, 46.61.504, or an  
27 equivalent local ordinance; or

28 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
29 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
30 ordinance, if the charge under which the deferred prosecution was  
31 granted was originally filed as a violation of RCW 46.61.502 or  
32 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
33 46.61.522.

34 (b) "Within (~~five~~) seven years" means that the arrest for a prior  
35 offense occurred within (~~five~~) seven years of the arrest for the  
36 current offense.

37 **Sec. 2.** RCW 46.61.5058 and 1995 c 332 s 6 are each amended to read  
38 as follows:

1 (1) Upon the arrest of a person or upon the filing of a complaint,  
2 citation, or information in a court of competent jurisdiction, based  
3 upon probable cause to believe that a person has violated RCW 46.61.502  
4 or 46.61.504 or any similar municipal ordinance, if such person has a  
5 prior offense within ((five)) seven years as defined in RCW 46.61.5055,  
6 and where the person has been provided written notice that any  
7 transfer, sale, or encumbrance of such person's interest in the vehicle  
8 over which that person was actually driving or had physical control  
9 when the violation occurred, is unlawful pending either acquittal,  
10 dismissal, sixty days after conviction, or other termination of the  
11 charge, such person shall be prohibited from encumbering, selling, or  
12 transferring his or her interest in such vehicle, except as otherwise  
13 provided in (a), (b), and (c) of this subsection, until either  
14 acquittal, dismissal, sixty days after conviction, or other termination  
15 of the charge. The prohibition against transfer of title shall not be  
16 stayed pending the determination of an appeal from the conviction.

17 (a) A vehicle encumbered by a bona fide security interest may be  
18 transferred to the secured party or to a person designated by the  
19 secured party;

20 (b) A leased or rented vehicle may be transferred to the lessor,  
21 rental agency, or to a person designated by the lessor or rental  
22 agency; and

23 (c) A vehicle may be transferred to a third party or a vehicle  
24 dealer who is a bona fide purchaser or may be subject to a bona fide  
25 security interest in the vehicle unless it is established that (i) in  
26 the case of a purchase by a third party or vehicle dealer, such party  
27 or dealer had actual notice that the vehicle was subject to the  
28 prohibition prior to the purchase, or (ii) in the case of a security  
29 interest, the holder of the security interest had actual notice that  
30 the vehicle was subject to the prohibition prior to the encumbrance of  
31 title.

32 (2) On conviction for a violation of either RCW 46.61.502 or  
33 46.61.504 or any similar municipal ordinance where the person convicted  
34 has a prior offense within ((five)) seven years as defined in RCW  
35 46.61.5055, the motor vehicle the person was driving or over which the  
36 person had actual physical control at the time of the offense, if the  
37 person has a financial interest in the vehicle, is subject to seizure  
38 and forfeiture pursuant to this section.

1 (3) A vehicle subject to forfeiture under this chapter may be  
2 seized by a law enforcement officer of this state upon process issued  
3 by a court of competent jurisdiction. Seizure of a vehicle may be made  
4 without process if the vehicle subject to seizure has been the subject  
5 of a prior judgment in favor of the state in a forfeiture proceeding  
6 based upon this section.

7 (4) Seizure under subsection (3) of this section automatically  
8 commences proceedings for forfeiture. The law enforcement agency under  
9 whose authority the seizure was made shall cause notice of the seizure  
10 and intended forfeiture of the seized vehicle to be served within  
11 fifteen days after the seizure on the owner of the vehicle seized, on  
12 the person in charge of the vehicle, and on any person having a known  
13 right or interest in the vehicle, including a community property  
14 interest. The notice of seizure may be served by any method authorized  
15 by law or court rule, including but not limited to service by certified  
16 mail with return receipt requested. Service by mail is complete upon  
17 mailing within the fifteen-day period after the seizure. Notice of  
18 seizure in the case of property subject to a security interest that has  
19 been perfected on a certificate of title shall be made by service upon  
20 the secured party or the secured party's assignee at the address shown  
21 on the financing statement or the certificate of title.

22 (5) If no person notifies the seizing law enforcement agency in  
23 writing of the person's claim of ownership or right to possession of  
24 the seized vehicle within forty-five days of the seizure, the vehicle  
25 is deemed forfeited.

26 (6) If a person notifies the seizing law enforcement agency in  
27 writing of the person's claim of ownership or right to possession of  
28 the seized vehicle within forty-five days of the seizure, the law  
29 enforcement agency shall give the person or persons a reasonable  
30 opportunity to be heard as to the claim or right. The hearing shall be  
31 before the chief law enforcement officer of the seizing agency or the  
32 chief law enforcement officer's designee, except where the seizing  
33 agency is a state agency as defined in RCW 34.12.020, the hearing shall  
34 be before the chief law enforcement officer of the seizing agency or an  
35 administrative law judge appointed under chapter 34.12 RCW, except that  
36 any person asserting a claim or right may remove the matter to a court  
37 of competent jurisdiction. Removal may only be accomplished according  
38 to the rules of civil procedure. The person seeking removal of the  
39 matter must serve process against the state, county, political



1 subdivision, or municipality that operates the seizing agency, and any  
2 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,  
3 within forty-five days after the person seeking removal has notified  
4 the seizing law enforcement agency of the person's claim of ownership  
5 or right to possession. The court to which the matter is to be removed  
6 shall be the district court when the aggregate value of the vehicle is  
7 within the jurisdictional limit set forth in RCW 3.66.020. A hearing  
8 before the seizing agency and any appeal therefrom shall be under Title  
9 34 RCW. In a court hearing between two or more claimants to the  
10 vehicle involved, the prevailing party shall be entitled to a judgment  
11 for costs and reasonable attorneys' fees. The burden of producing  
12 evidence shall be upon the person claiming to be the legal owner or the  
13 person claiming to have the lawful right to possession of the vehicle.  
14 The seizing law enforcement agency shall promptly return the vehicle to  
15 the claimant upon a determination by the administrative law judge or  
16 court that the claimant is the present legal owner under Title 46 RCW  
17 or is lawfully entitled to possession of the vehicle.

18 (7) When a vehicle is forfeited under this chapter the seizing law  
19 enforcement agency may sell the vehicle, retain it for official use, or  
20 upon application by a law enforcement agency of this state release the  
21 vehicle to that agency for the exclusive use of enforcing this title;  
22 provided, however, that the agency shall first satisfy any bona fide  
23 security interest to which the vehicle is subject under subsection (1)  
24 (a) or (c) of this section.

25 (8) When a vehicle is forfeited, the seizing agency shall keep a  
26 record indicating the identity of the prior owner, if known, a  
27 description of the vehicle, the disposition of the vehicle, the value  
28 of the vehicle at the time of seizure, and the amount of proceeds  
29 realized from disposition of the vehicle.

30 (9) Each seizing agency shall retain records of forfeited vehicles  
31 for at least seven years.

32 (10) Each seizing agency shall file a report including a copy of  
33 the records of forfeited vehicles with the state treasurer each  
34 calendar quarter.

35 (11) The quarterly report need not include a record of a forfeited  
36 vehicle that is still being held for use as evidence during the  
37 investigation or prosecution of a case or during the appeal from a  
38 conviction.

1 (12) By January 31st of each year, each seizing agency shall remit  
2 to the state treasurer an amount equal to ten percent of the net  
3 proceeds of vehicles forfeited during the preceding calendar year.  
4 Money remitted shall be deposited in the public safety and education  
5 account.

6 (13) The net proceeds of a forfeited vehicle is the value of the  
7 forfeitable interest in the vehicle after deducting the cost of  
8 satisfying a bona fide security interest to which the vehicle is  
9 subject at the time of seizure; and in the case of a sold vehicle,  
10 after deducting the cost of sale, including reasonable fees or  
11 commissions paid to independent selling agents.

12 (14) The value of a sold forfeited vehicle is the sale price. The  
13 value of a retained forfeited vehicle is the fair market value of the  
14 vehicle at the time of seizure, determined when possible by reference  
15 to an applicable commonly used index, such as the index used by the  
16 department of licensing. A seizing agency may, but need not, use an  
17 independent qualified appraiser to determine the value of retained  
18 vehicles. If an appraiser is used, the value of the vehicle appraised  
19 is net of the cost of the appraisal.

20 **Sec. 3.** RCW 46.01.260 and 1997 c 66 s 11 are each amended to read  
21 as follows:

22 (1) Except as provided in subsection (2) of this section, the  
23 director, in his or her discretion, may destroy applications for  
24 vehicle licenses, copies of vehicle licenses issued, applications for  
25 drivers' licenses, copies of issued drivers' licenses, certificates of  
26 title and registration or other documents, records or supporting papers  
27 on file in his or her office which have been microfilmed or  
28 photographed or are more than five years old. If the applications for  
29 vehicle licenses are renewal applications, the director may destroy  
30 such applications when the computer record thereof has been updated.

31 (2)(a) The director shall not destroy records of convictions or  
32 adjudications of RCW 46.61.520 and 46.61.522 or records of deferred  
33 prosecutions granted under RCW 10.05.120 and shall maintain such  
34 records permanently on file.

35 (b) The director shall not, within ((ten)) fifteen years from the  
36 date of conviction((7)) or adjudication((7—or—entry—of—deferred  
37 prosecution)), destroy records of the following:

1 (i) Convictions or adjudications of the following offenses: RCW  
2 46.61.502 or 46.61.504; or  
3 (ii) If the offense was originally charged as one of the offenses  
4 designated in (a) or (b)(i) of this subsection, convictions or  
5 adjudications of the following offenses: RCW 46.61.500 or 46.61.5249  
6 or any other violation that was originally charged as one of the  
7 offenses designated in (a) or (b)(i) of this subsection(~~(or~~  
8 ~~(iii) Deferred prosecutions granted under RCW 10.05.120)~~).  
9 (c) For purposes of RCW 46.52.100 and 46.52.130, offenses subject  
10 to this subsection shall be considered "alcohol-related" offenses.

11 **Sec. 4.** RCW 46.20.285 and 1996 c 199 s 5 are each amended to read  
12 as follows:

13 The department shall forthwith revoke the license of any driver for  
14 the period of one calendar year unless otherwise provided in this  
15 section, upon receiving a record of the driver's conviction of any of  
16 the following offenses, when the conviction has become final:

17 (1) For vehicular homicide the period of revocation shall be two  
18 years. The revocation period shall be tolled during any period of  
19 total confinement for the offense;

20 (2) Vehicular assault. The revocation period shall be tolled  
21 during any period of total confinement for the offense;

22 (3) Driving a motor vehicle while under the influence of  
23 intoxicating liquor or a narcotic drug, or under the influence of any  
24 other drug to a degree which renders the driver incapable of safely  
25 driving a motor vehicle, (~~(upon a showing by the department's records~~  
26 ~~that the conviction is the second such conviction for the driver within~~  
27 ~~a period of five years. Upon a showing that the conviction is the~~  
28 ~~third such conviction for the driver within a period of five years, the~~  
29 ~~period of revocation shall be two years)~~) for the period prescribed in  
30 RCW 46.61.5055;

31 (4) Any felony in the commission of which a motor vehicle is used;

32 (5) Failure to stop and give information or render aid as required  
33 under the laws of this state in the event of a motor vehicle accident  
34 resulting in the death or personal injury of another or resulting in  
35 damage to a vehicle that is driven or attended by another;

36 (6) Perjury or the making of a false affidavit or statement under  
37 oath to the department under Title 46 RCW or under any other law  
38 relating to the ownership or operation of motor vehicles;

1 (7) Reckless driving upon a showing by the department's records  
2 that the conviction is the third such conviction for the driver within  
3 a period of two years.

4 **Sec. 5.** RCW 46.61.503 and 1995 c 332 s 2 are each amended to read  
5 as follows:

6 (1) Notwithstanding any other provision of this title, a person is  
7 guilty of driving a motor vehicle after consuming alcohol if the person  
8 operates a motor vehicle within this state and the person:

9 (a) Is under the age of twenty-one;

10 (b) Has, within two hours after operating the motor vehicle, an  
11 alcohol concentration of ~~((0.02 or more))~~ at least 0.02 but less than  
12 the concentration specified in RCW 46.61.502, as shown by analysis of  
13 the person's breath or blood made under RCW 46.61.506.

14 (2) It is an affirmative defense to a violation of subsection (1)  
15 of this section which the defendant must prove by a preponderance of  
16 the evidence that the defendant consumed a sufficient quantity of  
17 alcohol after the time of driving and before the administration of an  
18 analysis of the person's breath or blood to cause the defendant's  
19 alcohol concentration to be ~~((0.02 or more))~~ in violation of subsection  
20 (1) of this section within two hours after driving. The court shall  
21 not admit evidence of this defense unless the defendant notifies the  
22 prosecution prior to the earlier of: (a) Seven days prior to trial; or  
23 (b) the omnibus or pretrial hearing in the case of the defendant's  
24 intent to assert the affirmative defense.

25 (3) Analyses of blood or breath samples obtained more than two  
26 hours after the alleged driving may be used as evidence that within two  
27 hours of the alleged driving, a person had an alcohol concentration  
28 ~~((of 0.02 or more))~~ in violation of subsection (1) of this section.

29 (4) A violation of this section is a misdemeanor.

30 **Sec. 6.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to read  
31 as follows:

32 (1) Any person who operates a motor vehicle within this state is  
33 deemed to have given consent, subject to the provisions of RCW  
34 46.61.506, to a test or tests of his or her breath or blood for the  
35 purpose of determining the alcohol concentration or presence of any  
36 drug in his or her breath or blood if arrested for any offense where,  
37 at the time of the arrest, the arresting officer has reasonable grounds

1 to believe the person had been driving or was in actual physical  
2 control of a motor vehicle while under the influence of intoxicating  
3 liquor or any drug or was in violation of RCW 46.61.503.

4 (2) The test or tests of breath shall be administered at the  
5 direction of a law enforcement officer having reasonable grounds to  
6 believe the person to have been driving or in actual physical control  
7 of a motor vehicle within this state while under the influence of  
8 intoxicating liquor or the person to have been driving or in actual  
9 physical control of a motor vehicle while having alcohol in a  
10 concentration (~~(of 0.02 or more)~~) in violation of RCW 46.61.503 in his  
11 or her system and being under the age of twenty-one. However, in those  
12 instances where the person is incapable due to physical injury,  
13 physical incapacity, or other physical limitation, of providing a  
14 breath sample or where the person is being treated in a hospital,  
15 clinic, doctor's office, emergency medical vehicle, ambulance, or other  
16 similar facility in which a breath testing instrument is not present or  
17 where the officer has reasonable grounds to believe that the person is  
18 under the influence of a drug, a blood test shall be administered by a  
19 qualified person as provided in RCW 46.61.506(4). The officer shall  
20 inform the person of his or her right to refuse the breath or blood  
21 test, and of his or her right to have additional tests administered by  
22 any qualified person of his or her choosing as provided in RCW  
23 46.61.506. The officer shall warn the driver that:

24 (a) His or her license, permit, or privilege to drive will be  
25 revoked or denied if he or she refuses to submit to the test;

26 (b) His or her license, permit, or privilege to drive will be  
27 suspended, revoked, denied, or placed in probationary status if the  
28 test is administered and the test indicates the alcohol concentration  
29 of the person's breath or blood is 0.10 or more, in the case of a  
30 person age twenty-one or over, or (~~0.02 or more~~) in violation of RCW  
31 46.61.502, 46.61.503, or 46.61.504 in the case of a person under age  
32 twenty-one; and

33 (c) His or her refusal to take the test may be used in a criminal  
34 trial.

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

1 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest  
2 results from an accident in which there has been serious bodily injury  
3 to another person, a breath or blood test may be administered without  
4 the consent of the individual so arrested.

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

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

16 (6) If, after arrest and after the other applicable conditions and  
17 requirements of this section have been satisfied, a test or tests of  
18 the person's blood or breath is administered and the test results  
19 indicate that the alcohol concentration of the person's breath or blood  
20 is 0.10 or more if the person is age twenty-one or over, or is (~~0.02~~  
21 ~~or more~~) in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the  
22 person is under the age of twenty-one, or the person refuses to submit  
23 to a test, the arresting officer or other law enforcement officer at  
24 whose direction any test has been given, or the department, where  
25 applicable, if the arrest results in a test of the person's blood,  
26 shall:

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

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

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

37 (d) Serve notice in writing that the marked license or permit, if  
38 any, is a temporary license that is valid for sixty days from the date  
39 of arrest or from the date notice has been given in the event notice is

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

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

10 (i) That the officer had reasonable grounds to believe the arrested  
11 person had been driving or was in actual physical control of a motor  
12 vehicle within this state while under the influence of intoxicating  
13 liquor or drugs, or both, or was under the age of twenty-one years and  
14 had been driving or was in actual physical control of a motor vehicle  
15 while having an alcohol concentration (~~(of 0.02 or more)~~) in violation  
16 of RCW 46.61.503;

17 (ii) That after receipt of the warnings required by subsection (2)  
18 of this section the person refused to submit to a test of his or her  
19 blood or breath, or a test was administered and the results indicated  
20 that the alcohol concentration of the person's breath or blood was 0.10  
21 or more if the person is age twenty-one or over, or was (~~0.02 or~~  
22 ~~more~~) in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the  
23 person is under the age of twenty-one; and

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

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

36 (8) A person receiving notification under subsection (6)(b) of this  
37 section may, within thirty days after the notice has been given,  
38 request in writing a formal hearing before the department. The person  
39 shall pay a fee of one hundred dollars as part of the request. If the

1 request is mailed, it must be postmarked within thirty days after  
2 receipt of the notification. Upon timely receipt of such a request for  
3 a formal hearing, including receipt of the required one hundred dollar  
4 fee, the department shall afford the person an opportunity for a  
5 hearing. Except as otherwise provided in this section, the hearing is  
6 subject to and shall be scheduled and conducted in accordance with RCW  
7 46.20.329 and 46.20.332. The hearing shall be conducted in the county  
8 of the arrest, except that all or part of the hearing may, at the  
9 discretion of the department, be conducted by telephone or other  
10 electronic means. The hearing shall be held within sixty days  
11 following the arrest or following the date notice has been given in the  
12 event notice is given by the department following a blood test, unless  
13 otherwise agreed to by the department and the person, in which case the  
14 action by the department shall be stayed, and any valid temporary  
15 license marked under subsection (6)(c) of this section extended, if the  
16 person is otherwise eligible for licensing. For the purposes of this  
17 section, the scope of the hearing shall cover the issues of whether a  
18 law enforcement officer had reasonable grounds to believe the person  
19 had been driving or was in actual physical control of a motor vehicle  
20 within this state while under the influence of intoxicating liquor or  
21 any drug or had been driving or was in actual physical control of a  
22 motor vehicle within this state while having alcohol in his or her  
23 system in a concentration (~~(of 0.02 or more)~~) in violation of RCW  
24 46.61.503 and was under the age of twenty-one, whether the person was  
25 placed under arrest, and (a) whether the person refused to submit to  
26 the test or tests upon request of the officer after having been  
27 informed that such refusal would result in the revocation of the  
28 person's license, permit, or privilege to drive, or (b) if a test or  
29 tests were administered, whether the applicable requirements of this  
30 section were satisfied before the administration of the test or tests,  
31 whether the person submitted to the test or tests, or whether a test  
32 was administered without express consent as permitted under this  
33 section, and whether the test or tests indicated that the alcohol  
34 concentration of the person's breath or blood was 0.10 or more if the  
35 person was age twenty-one or over at the time of the arrest, or was  
36 (~~(0.02 or more)~~) in violation of RCW 46.61.502, 46.61.503, or 46.61.504  
37 if the person was under the age of twenty-one at the time of the  
38 arrest. The sworn report or report under a declaration authorized by  
39 RCW 9A.72.085 submitted by a law enforcement officer is prima facie



1 evidence that the officer had reasonable grounds to believe the person  
2 had been driving or was in actual physical control of a motor vehicle  
3 within this state while under the influence of intoxicating liquor or  
4 drugs, or both, or the person had been driving or was in actual  
5 physical control of a motor vehicle within this state while having  
6 alcohol in his or her system in a concentration ((of 0.02 or more)) in  
7 violation of RCW 46.61.503 and was under the age of twenty-one and that  
8 the officer complied with the requirements of this section.

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

24 (9) If the suspension, revocation, denial, or placement in  
25 probationary status is sustained after such a hearing, the person whose  
26 license, privilege, or permit is suspended, revoked, denied, or placed  
27 in probationary status has the right to file a petition in the superior  
28 court of the county of arrest to review the final order of revocation  
29 by the department in the same manner as an appeal from a decision of a  
30 court of limited jurisdiction. The appellant must pay the costs  
31 associated with obtaining the record of the hearing before the hearing  
32 officer. The filing of the appeal does not stay the effective date of  
33 the suspension, revocation, denial, or placement in probationary  
34 status. A petition filed under this subsection must include the  
35 petitioner's grounds for requesting review. Upon granting petitioner's  
36 request for review, the court shall review the department's final order  
37 of suspension, revocation, denial, or placement in probationary status  
38 as expeditiously as possible. If judicial relief is sought for a stay  
39 or other temporary remedy from the department's action, the court shall

1 not grant such relief unless the court finds that the appellant is  
2 likely to prevail in the appeal and that without a stay the appellant  
3 will suffer irreparable injury. If the court stays the suspension,  
4 revocation, denial, or placement in probationary status it may impose  
5 conditions on such stay.

6 (10) If a person whose driver's license, permit, or privilege to  
7 drive has been or will be suspended, revoked, denied, or placed in  
8 probationary status under subsection (7) of this section, other than as  
9 a result of a breath test refusal, and who has not committed an offense  
10 within the last five years for which he or she was granted a deferred  
11 prosecution under chapter 10.05 RCW, petitions a court for a deferred  
12 prosecution on criminal charges arising out of the arrest for which  
13 action has been or will be taken under subsection (7) of this section,  
14 the court may direct the department to stay any actual or proposed  
15 suspension, revocation, denial, or placement in probationary status for  
16 at least forty-five days but not more than ninety days. If the court  
17 stays the suspension, revocation, denial, or placement in probationary  
18 status, it may impose conditions on such stay. If the person is  
19 otherwise eligible for licensing, the department shall issue a  
20 temporary license, or extend any valid temporary license marked under  
21 subsection (6) of this section, for the period of the stay. If a  
22 deferred prosecution treatment plan is not recommended in the report  
23 made under RCW 10.05.050, or if treatment is rejected by the court, or  
24 if the person declines to accept an offered treatment plan, or if the  
25 person violates any condition imposed by the court, then the court  
26 shall immediately direct the department to cancel the stay and any  
27 temporary marked license or extension of a temporary license issued  
28 under this subsection.

29 A suspension, revocation, or denial imposed under this section,  
30 other than as a result of a breath test refusal, shall be stayed if the  
31 person is accepted for deferred prosecution as provided in chapter  
32 10.05 RCW for the incident upon which the suspension, revocation, or  
33 denial is based. If the deferred prosecution is terminated, the stay  
34 shall be lifted and the suspension, revocation, or denial reinstated.  
35 If the deferred prosecution is completed, the stay shall be lifted and  
36 the suspension, revocation, or denial canceled.

37 (11) When it has been finally determined under the procedures of  
38 this section that a nonresident's privilege to operate a motor vehicle  
39 in this state has been suspended, revoked, or denied, the department

1 shall give information in writing of the action taken to the motor  
2 vehicle administrator of the state of the person's residence and of any  
3 state in which he or she has a license.

4 **Sec. 7.** RCW 46.20.3101 and 1995 c 332 s 3 are each amended to read  
5 as follows:

6 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or  
7 deny the arrested person's license, permit, or privilege to drive as  
8 follows:

9 (1) In the case of a person who has refused a test or tests:

10 (a) For a first refusal within ((five)) seven years, where there  
11 has not been a previous incident within ((five)) seven years that  
12 resulted in administrative action under this section, revocation or  
13 denial for one year;

14 (b) For a second or subsequent refusal within ((five)) seven years,  
15 or for a first refusal where there has been one or more previous  
16 incidents within ((five)) seven years that have resulted in  
17 administrative action under this section, revocation or denial for two  
18 years or until the person reaches age twenty-one, whichever is longer.  
19 A revocation imposed under this subsection (1)(b) shall run  
20 consecutively to the period of any suspension, revocation, or denial  
21 imposed pursuant to a criminal conviction arising out of the same  
22 incident.

23 (2) In the case of an incident where a person has submitted to or  
24 been administered a test or tests indicating that the alcohol  
25 concentration of the person's breath or blood was 0.10 or more:

26 (a) For a first incident within ((five)) seven years, where there  
27 has not been a previous incident within ((five)) seven years that  
28 resulted in administrative action under this section, placement in  
29 probationary status as provided in RCW 46.20.355;

30 (b) For a second or subsequent incident within ((five)) seven  
31 years, revocation or denial for two years.

32 (3) In the case of an incident where a person under age twenty-one  
33 has submitted to or been administered a test or tests indicating that  
34 the alcohol concentration of the person's breath or blood was ((0.02 or  
35 more)) in violation of RCW 46.61.503:

36 (a) For a first incident within ((five)) seven years, suspension or  
37 denial for ninety days;

1 (b) For a second or subsequent incident within ((five)) seven  
2 years, revocation or denial for one year or until the person reaches  
3 age twenty-one, whichever is longer.

4 **Sec. 8.** RCW 46.20.391 and 1995 c 332 s 12 are each amended to read  
5 as follows:

6 (1) Any person licensed under this chapter who is convicted of an  
7 offense relating to motor vehicles for which suspension or revocation  
8 of the driver's license is mandatory, other than vehicular homicide or  
9 vehicular assault, may submit to the department an application for an  
10 occupational driver's license. The department, upon receipt of the  
11 prescribed fee and upon determining that the petitioner is engaged in  
12 an occupation or trade that makes it essential that the petitioner  
13 operate a motor vehicle, may issue an occupational driver's license and  
14 may set definite restrictions as provided in RCW 46.20.394. No person  
15 may petition for, and the department shall not issue, an occupational  
16 driver's license that is effective during the first thirty days of any  
17 suspension or revocation imposed for a violation of RCW 46.61.502 or  
18 46.61.504. A person aggrieved by the decision of the department on the  
19 application for an occupational driver's license may request a hearing  
20 as provided by rule of the department.

21 (2) An applicant for an occupational driver's license is eligible  
22 to receive such license only if:

23 (a) Within one year immediately preceding the date of the offense  
24 that gave rise to the present conviction, the applicant has not  
25 committed any offense relating to motor vehicles for which suspension  
26 or revocation of a driver's license is mandatory; and

27 (b) Within ((five)) seven years immediately preceding the date of  
28 the offense that gave rise to the present conviction, the applicant has  
29 not committed any of the following offenses: (i) Driving or being in  
30 actual physical control of a motor vehicle while under the influence of  
31 intoxicating liquor; (ii) vehicular homicide under RCW 46.61.520; or  
32 (iii) vehicular assault under RCW 46.61.522; and

33 (c) The applicant is engaged in an occupation or trade that makes  
34 it essential that he or she operate a motor vehicle; and

35 (d) The applicant files satisfactory proof of financial  
36 responsibility pursuant to chapter 46.29 RCW.

37 (3) The director shall cancel an occupational driver's license upon  
38 receipt of notice that the holder thereof has been convicted of

1 operating a motor vehicle in violation of its restrictions, or of an  
2 offense that pursuant to chapter 46.20 RCW would warrant suspension or  
3 revocation of a regular driver's license. The cancellation is  
4 effective as of the date of the conviction, and continues with the same  
5 force and effect as any suspension or revocation under this title.

6 NEW SECTION. **Sec. 9.** If specific funding for the purposes of this  
7 act, referencing this act by bill or chapter number, is not provided by  
8 June 30, 1998, in the omnibus appropriations act, this act is null and  
9 void.

10 NEW SECTION. **Sec. 10.** This act takes effect January 1, 1999."

11 **2SHB 3070** - S AMD - 883  
12 By Senator Roach

13

14 On page 1, line 1 of the title, after "influence;" strike the  
15 remainder of the title and insert "amending RCW 46.61.5058, 46.01.260,  
16 46.20.285, 46.61.503, 46.20.308, 46.20.3101, and 46.20.391; reenacting  
17 and amending RCW 46.61.5055; creating a new section; prescribing  
18 penalties; and providing an effective date."

--- END ---