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**ENGROSSED SENATE BILL 6142**

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**State of Washington**

**55th Legislature**

**1998 Regular Session**

**By** Senators Kline, Roach, Patterson, Fairley, Swecker, T. Sheldon, Goings, Rasmussen, Oke and Benton

Read first time 01/12/98. Referred to Committee on Law & Justice.

1       AN ACT Relating to administrative license suspension for first-time  
2 violators of laws against driving or being in actual physical control  
3 of a motor vehicle while under the influence of intoxicating liquor or  
4 any drug; amending RCW 46.20.308, 46.20.3101, 46.20.355, and 46.20.391;  
5 and prescribing penalties.

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

7       **Sec. 1.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to read  
8 as follows:

9       (1) Any person who operates a motor vehicle within this state is  
10 deemed to have given consent, subject to the provisions of RCW  
11 46.61.506, to a test or tests of his or her breath or blood for the  
12 purpose of determining the alcohol concentration or presence of any  
13 drug in his or her breath or blood if arrested for any offense where,  
14 at the time of the arrest, the arresting officer has reasonable grounds  
15 to believe the person had been driving or was in actual physical  
16 control of a motor vehicle while under the influence of intoxicating  
17 liquor or any drug or was in violation of RCW 46.61.503.

18       (2) The test or tests of breath shall be administered at the  
19 direction of a law enforcement officer having reasonable grounds to

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

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

21 (b) His or her license, permit, or privilege to drive will be  
22 suspended, revoked, or denied(~~(, or placed in probationary status)~~) if  
23 the test is administered and the test indicates the alcohol  
24 concentration of the person's breath or blood is 0.10 or more, in the  
25 case of a person age twenty-one or over, or 0.02 or more in the case of  
26 a person under age twenty-one; and

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

29 (3) Except as provided in this section, the test administered shall  
30 be of the breath only. If an individual is unconscious or is under  
31 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
32 or vehicular assault as provided in RCW 46.61.522, or if an individual  
33 is under arrest for the crime of driving while under the influence of  
34 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest  
35 results from an accident in which there has been serious bodily injury  
36 to another person, a breath or blood test may be administered without  
37 the consent of the individual so arrested.

38 (4) Any person who is dead, unconscious, or who is otherwise in a  
39 condition rendering him or her incapable of refusal, shall be deemed

1 not to have withdrawn the consent provided by subsection (1) of this  
2 section and the test or tests may be administered, subject to the  
3 provisions of RCW 46.61.506, and the person shall be deemed to have  
4 received the warnings required under subsection (2) of this section.

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

10 (6) If, after arrest and after the other applicable conditions and  
11 requirements of this section have been satisfied, a test or tests of  
12 the person's blood or breath is administered and the test results  
13 indicate that the alcohol concentration of the person's breath or blood  
14 is 0.10 or more if the person is age twenty-one or over, or is 0.02 or  
15 more if the person is under the age of twenty-one, or the person  
16 refuses to submit to a test, the arresting officer or other law  
17 enforcement officer at whose direction any test has been given, or the  
18 department, where applicable, if the arrest results in a test of the  
19 person's blood, shall:

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

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

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

30 (d) Serve notice in writing that the marked license or permit, if  
31 any, is a temporary license that is valid for 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 until the  
34 suspension, revocation, or denial of the person's license, permit, or  
35 privilege to drive is sustained at a hearing pursuant to subsection (8)  
36 of this section, whichever occurs first. No temporary license is valid  
37 to any greater degree than the license or permit that it replaces; and

38 (e) Immediately notify the department of the arrest and transmit to  
39 the department within seventy-two hours, except as delayed as the

1 result of a blood test, a sworn report or report under a declaration  
2 authorized by RCW 9A.72.085 that states:

3 (i) That the officer had reasonable grounds to believe the arrested  
4 person had been driving or was in actual physical control of a motor  
5 vehicle within this state while under the influence of intoxicating  
6 liquor or drugs, or both, or was under the age of twenty-one years and  
7 had been driving or was in actual physical control of a motor vehicle  
8 while having an alcohol concentration of 0.02 or more;

9 (ii) That after receipt of the warnings required by subsection (2)  
10 of this section the person refused to submit to a test of his or her  
11 blood or breath, or a test was administered and the results indicated  
12 that the alcohol concentration of the person's breath or blood was 0.10  
13 or more if the person is age twenty-one or over, or was 0.02 or more if  
14 the person is under the age of twenty-one; and

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

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

27 (8) A person receiving notification under subsection (6)(b) of this  
28 section may, within thirty days after the notice has been given,  
29 request in writing a formal hearing before the department. The person  
30 shall pay a fee of one hundred dollars as part of the request. If the  
31 request is mailed, it must be postmarked within thirty days after  
32 receipt of the notification. Upon timely receipt of such a request for  
33 a formal hearing, including receipt of the required one hundred dollar  
34 fee, the department shall afford the person an opportunity for a  
35 hearing. Except as otherwise provided in this section, the hearing is  
36 subject to and shall be scheduled and conducted in accordance with RCW  
37 46.20.329 and 46.20.332. The hearing shall be conducted in the county  
38 of the arrest, except that all or part of the hearing may, at the  
39 discretion of the department, be conducted by telephone or other

1 electronic means. The hearing shall be held within sixty days  
2 following the arrest or following the date notice has been given in the  
3 event notice is given by the department following a blood test, unless  
4 otherwise agreed to by the department and the person, in which case the  
5 action by the department shall be stayed, and any valid temporary  
6 license marked under subsection (6)(c) of this section extended, if the  
7 person is otherwise eligible for licensing. For the purposes of this  
8 section, the scope of the hearing shall cover the issues of whether a  
9 law enforcement officer had reasonable grounds to believe the person  
10 had been driving or was in actual physical control of a motor vehicle  
11 within this state while under the influence of intoxicating liquor or  
12 any drug or had been driving or was in actual physical control of a  
13 motor vehicle within this state while having alcohol in his or her  
14 system in a concentration of 0.02 or more and was under the age of  
15 twenty-one, whether the person was placed under arrest, and (a) whether  
16 the person refused to submit to the test or tests upon request of the  
17 officer after having been informed that such refusal would result in  
18 the revocation of the person's license, permit, or privilege to drive,  
19 or (b) if a test or tests were administered, whether the applicable  
20 requirements of this section were satisfied before the administration  
21 of the test or tests, whether the person submitted to the test or  
22 tests, or whether a test was administered without express consent as  
23 permitted under this section, and whether the test or tests indicated  
24 that the alcohol concentration of the person's breath or blood was 0.10  
25 or more if the person was age twenty-one or over at the time of the  
26 arrest, or was 0.02 or more if the person was under the age of twenty-  
27 one at the time of the arrest. The sworn report or report under a  
28 declaration authorized by RCW 9A.72.085 submitted by a law enforcement  
29 officer is prima facie evidence that the officer had reasonable grounds  
30 to believe the person had been driving or was in actual physical  
31 control of a motor vehicle within this state while under the influence  
32 of intoxicating liquor or drugs, or both, or the person had been  
33 driving or was in actual physical control of a motor vehicle within  
34 this state while having alcohol in his or her system in a concentration  
35 of 0.02 or more and was under the age of twenty-one and that the  
36 officer complied with the requirements of this section.

37 A hearing officer shall conduct the hearing, may issue subpoenas  
38 for the attendance of witnesses and the production of documents, and  
39 shall administer oaths to witnesses. The hearing officer shall not

1 issue a subpoena for the attendance of a witness at the request of the  
2 person unless the request is accompanied by the fee required by RCW  
3 5.56.010 for a witness in district court. The sworn report or report  
4 under a declaration authorized by RCW 9A.72.085 of the law enforcement  
5 officer and any other evidence accompanying the report shall be  
6 admissible without further evidentiary foundation and the  
7 certifications authorized by the criminal rules for courts of limited  
8 jurisdiction shall be admissible without further evidentiary  
9 foundation. The person may be represented by counsel, may question  
10 witnesses, may present evidence, and may testify. The department shall  
11 order that the suspension, revocation, or denial(~~(, or placement in~~  
12 ~~probationary status)~~) either be rescinded or sustained.

13 (9) If the suspension, revocation, or denial(~~(, or placement in~~  
14 ~~probationary status)~~) is sustained after such a hearing, the person  
15 whose license, privilege, or permit is suspended, revoked, or denied(~~(, or placed in probationary status)~~) has the right to file a petition in  
16 the superior court of the county of arrest to review the final order of  
17 revocation by the department in the same manner as an appeal from a  
18 decision of a court of limited jurisdiction. The appellant must pay  
19 the costs associated with obtaining the record of the hearing before  
20 the hearing officer. The filing of the appeal does not stay the  
21 effective date of the suspension, revocation, or denial(~~(, or placement~~  
22 ~~in probationary status)~~). A petition filed under this subsection must  
23 include the petitioner's grounds for requesting review. Upon granting  
24 petitioner's request for review, the court shall review the  
25 department's final order of suspension, revocation, or denial(~~(, or~~  
26 ~~placement in probationary status)~~) as expeditiously as possible. If  
27 judicial relief is sought for a stay or other temporary remedy from the  
28 department's action, the court shall not grant such relief unless the  
29 court finds that the appellant is likely to prevail in the appeal and  
30 that without a stay the appellant will suffer irreparable injury. If  
31 the court stays the suspension, revocation, or denial(~~(, or placement~~  
32 ~~in probationary status)~~) it may impose conditions on such stay.

34 (10) If a person whose driver's license, permit, or privilege to  
35 drive has been or will be suspended, revoked, or denied(~~(, or placed in~~  
36 ~~probationary status)~~) under subsection (7) of this section, other than  
37 as a result of a breath test refusal, and who has not committed an  
38 offense within the last five years for which he or she was granted a  
39 deferred prosecution under chapter 10.05 RCW, petitions a court for a

1 deferred prosecution on criminal charges arising out of the arrest for  
2 which action has been or will be taken under subsection (7) of this  
3 section, the court may direct the department to stay any actual or  
4 proposed suspension, revocation, or denial(~~(, or placement in~~  
5 ~~probationary status))~~) for at least forty-five days but not more than  
6 ninety days. If the court stays the suspension, revocation, or  
7 denial(~~(, or placement in probationary status))~~), it may impose  
8 conditions on such stay. If the person is otherwise eligible for  
9 licensing, the department shall issue a temporary license, or extend  
10 any valid temporary license marked under subsection (6) of this  
11 section, for the period of the stay. If a deferred prosecution  
12 treatment plan is not recommended in the report made under RCW  
13 10.05.050, or if treatment is rejected by the court, or if the person  
14 declines to accept an offered treatment plan, or if the person violates  
15 any condition imposed by the court, then the court shall immediately  
16 direct the department to cancel the stay and any temporary marked  
17 license or extension of a temporary license issued under this  
18 subsection.

19 A suspension, revocation, or denial imposed under this section,  
20 other than as a result of a breath test refusal, shall be stayed if the  
21 person is accepted for deferred prosecution as provided in chapter  
22 10.05 RCW for the incident upon which the suspension, revocation, or  
23 denial is based. If the deferred prosecution is terminated, the stay  
24 shall be lifted and the suspension, revocation, or denial reinstated.  
25 If the deferred prosecution is completed, the stay shall be lifted and  
26 the suspension, revocation, or denial canceled.

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

33 **Sec. 2.** RCW 46.20.3101 and 1995 c 332 s 3 are each amended to read  
34 as follows:

35 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or  
36 deny the arrested person's license, permit, or privilege to drive as  
37 follows:

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

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

4 (b) For a second or subsequent refusal within five years, or for a  
5 first refusal where there has been one or more previous incidents  
6 within five years that have resulted in administrative action under  
7 this section, revocation or denial for two years or until the person  
8 reaches age twenty-one, whichever is longer. A revocation imposed  
9 under this subsection (1)(b) shall run consecutively to the period of  
10 any suspension, revocation, or denial imposed pursuant to a criminal  
11 conviction arising out of the same incident.

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

15 (a) For a first incident within five years, where there has not  
16 been a previous incident within five years that resulted in  
17 administrative action under this section, (~~placement in probationary~~  
18 ~~status as provided in RCW 46.20.355~~) suspension for ninety days;

19 (b) For a second or subsequent incident within five years,  
20 revocation or denial for two years.

21 (3) In the case of an incident where a person under age twenty-one  
22 has submitted to or been administered a test or tests indicating that  
23 the alcohol concentration of the person's breath or blood was 0.02 or  
24 more:

25 (a) For a first incident within five years, suspension or denial  
26 for ninety days;

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

30 **Sec. 3.** RCW 46.20.355 and 1995 1st sp.s. c 17 s 1 are each amended  
31 to read as follows:

32 (1) Upon (~~placing a license, permit, or privilege to drive in~~  
33 ~~probationary status under RCW 46.20.3101(2)(a), or upon~~) receipt of an  
34 abstract indicating a deferred prosecution has been granted under RCW  
35 10.05.060, or upon receipt of a notice of conviction of RCW 46.61.502  
36 or 46.61.504, the department of licensing shall order the person to  
37 surrender any Washington state driver's license that may be in his or  
38 her possession. The department shall revoke the license, permit, or



1 privilege to drive of any person who fails to surrender it as required  
2 by this section for one year, unless the license has been previously  
3 surrendered to the department, a law enforcement officer, or a court,  
4 or the person has completed an affidavit of lost, stolen, destroyed, or  
5 previously surrendered license, such revocation to take effect thirty  
6 days after notice is given of the requirement for license surrender.

7 (2) The department shall place a person's driving privilege in  
8 probationary status as required by RCW 10.05.060(~~(, 46.20.308, )~~) or  
9 46.61.5055 for a period of five years from the date the probationary  
10 status is required to go into effect.

11 (3) Following receipt of an abstract indicating a deferred  
12 prosecution has been granted under RCW 10.05.060, (~~(or following~~  
13 ~~receipt of a sworn report under RCW 46.20.308 that requires immediate~~  
14 ~~placement in probationary status under RCW 46.20.3101(2)(a), )~~) or upon  
15 reinstatement or reissuance of a driver's license suspended or revoked  
16 as the result of a conviction of RCW 46.61.502 or 46.61.504, the  
17 department shall require the person to obtain a probationary license in  
18 order to operate a motor vehicle in the state of Washington, except as  
19 otherwise exempt under RCW 46.20.025. The department shall not issue  
20 the probationary license unless the person is otherwise qualified for  
21 licensing, and the person must renew the probationary license on the  
22 same cycle as the person's regular license would have been renewed  
23 until the expiration of the five-year probationary status period  
24 imposed under subsection (2) of this section.

25 (4) For each original issue or renewal of a probationary license  
26 under this section, the department shall charge a fee of fifty dollars  
27 in addition to any other licensing fees required. Except for when  
28 renewing a probationary license, the department shall waive the fifty-  
29 dollar fee if the person has a probationary license in his or her  
30 possession at the time a new probationary license is required.

31 (5) A probationary license shall enable the department and law  
32 enforcement personnel to determine that the person is on probationary  
33 status. The fact that a person's driving privilege is in probationary  
34 status or that the person has been issued a probationary license shall  
35 not be a part of the person's record that is available to insurance  
36 companies.

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

1 (1) Any person licensed under this chapter who is convicted of an  
2 offense relating to motor vehicles for which suspension or revocation  
3 of the driver's license is mandatory, other than vehicular homicide or  
4 vehicular assault, or who has had his or her license suspended under  
5 RCW 46.20.3101 (2)(a) or (3)(a), may submit to the department an  
6 application for an occupational driver's license. The department, upon  
7 receipt of the prescribed fee and upon determining that the petitioner  
8 is engaged in an occupation or trade that makes it essential that the  
9 petitioner operate a motor vehicle, may issue an occupational driver's  
10 license and may set definite restrictions as provided in RCW 46.20.394.  
11 No person may petition for, and the department shall not issue, an  
12 occupational driver's license that is effective during the first thirty  
13 days of any suspension or revocation imposed for a violation of RCW  
14 46.61.502 or 46.61.504 or pursuant to RCW 46.20.3101 (2)(a) or (3)(a).  
15 A person aggrieved by the decision of the department on the application  
16 for an occupational driver's license may request a hearing as provided  
17 by rule of the department.

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

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

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

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

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

34 (3) The director shall cancel an occupational driver's license upon  
35 receipt of notice that the holder thereof has been convicted of  
36 operating a motor vehicle in violation of its restrictions, or of an  
37 offense that pursuant to chapter 46.20 RCW would warrant suspension or  
38 revocation of a regular driver's license. The cancellation is

1 effective as of the date of the conviction, and continues with the same  
2 force and effect as any suspension or revocation under this title.

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