
SENATE BILL 6257

State of Washington 55th Legislature 1998 Regular Session

By Senators Strannigan, Roach, Goings and Anderson

Read first time . Referred to Committee on .

1 AN ACT Relating to blood and breath alcohol standards for
2 intoxication; amending RCW 46.20.308, 46.20.3101, 46.61.502, 46.61.504,
3 46.61.506, and 88.12.025; and prescribing penalties.

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

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

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

16 (2) The test or tests of breath shall be administered at the
17 direction of a law enforcement officer having reasonable grounds to
18 believe the person to have been driving or in actual physical control
19 of a motor vehicle within this state while under the influence of

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

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

19 (b) His or her license, permit, or privilege to drive will be
20 suspended, revoked, denied, or placed in probationary status if the
21 test is administered and the test indicates the alcohol concentration
22 of the person's breath or blood is (~~0.10~~) 0.08 or more, in the case
23 of a person age twenty-one or over, or 0.02 or more in the case of a
24 person under age twenty-one; and

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

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

36 (4) Any person who is dead, unconscious, or who is otherwise in a
37 condition rendering him or her incapable of refusal, shall be deemed
38 not to have withdrawn the consent provided by subsection (1) of this
39 section and the test or tests may be administered, subject to the

1 provisions of RCW 46.61.506, and the person shall be deemed to have
2 received the warnings required under subsection (2) of this section.

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

8 (6) If, after arrest and after the other applicable conditions and
9 requirements of this section have been satisfied, a test or tests of
10 the person's blood or breath is administered and the test results
11 indicate that the alcohol concentration of the person's breath or blood
12 is ~~((0.10))~~ 0.08 or more if the person is age twenty-one or over, or is
13 0.02 or more if the person is under the age of twenty-one, or the
14 person refuses to submit to a test, the arresting officer or other law
15 enforcement officer at whose direction any test has been given, or the
16 department, where applicable, if the arrest results in a test of the
17 person's blood, shall:

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

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

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

28 (d) Serve notice in writing that the marked license or permit, if
29 any, is a temporary license that is valid for sixty days from the date
30 of arrest or from the date notice has been given in the event notice is
31 given by the department following a blood test, or until the
32 suspension, revocation, or denial of the person's license, permit, or
33 privilege to drive is sustained at a hearing pursuant to subsection (8)
34 of this section, whichever occurs first. No temporary license is valid
35 to any greater degree than the license or permit that it replaces; and

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

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

7 (ii) That after receipt of the warnings required by subsection (2)
8 of this section the person refused to submit to a test of his or her
9 blood or breath, or a test was administered and the results indicated
10 that the alcohol concentration of the person's breath or blood was
11 (~~0.10~~) 0.08 or more if the person is age twenty-one or over, or was
12 0.02 or more if the person is under the age of twenty-one; and

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

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

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

1 event notice is given by the department following a blood test, unless
2 otherwise agreed to by the department and the person, in which case the
3 action by the department shall be stayed, and any valid temporary
4 license marked under subsection (6)(c) of this section extended, if the
5 person is otherwise eligible for licensing. For the purposes of this
6 section, the scope of the hearing shall cover the issues of whether a
7 law enforcement officer had reasonable grounds to believe the person
8 had been driving or was in actual physical control of a motor vehicle
9 within this state while under the influence of intoxicating liquor or
10 any drug or had been driving or was in actual physical control of a
11 motor vehicle within this state while having alcohol in his or her
12 system in a concentration of 0.02 or more and was under the age of
13 twenty-one, whether the person was placed under arrest, and (a) whether
14 the person refused to submit to the test or tests upon request of the
15 officer after having been informed that such refusal would result in
16 the revocation of the person's license, permit, or privilege to drive,
17 or (b) if a test or tests were administered, whether the applicable
18 requirements of this section were satisfied before the administration
19 of the test or tests, whether the person submitted to the test or
20 tests, or whether a test was administered without express consent as
21 permitted under this section, and whether the test or tests indicated
22 that the alcohol concentration of the person's breath or blood was
23 ((0.10)) 0.08 or more if the person was age twenty-one or over at the
24 time of the arrest, or was 0.02 or more if the person was under the age
25 of twenty-one at the time of the arrest. The sworn report or report
26 under a declaration authorized by RCW 9A.72.085 submitted by a law
27 enforcement officer is prima facie evidence that the officer had
28 reasonable grounds to believe the person had been driving or was in
29 actual physical control of a motor vehicle within this state while
30 under the influence of intoxicating liquor or drugs, or both, or the
31 person had been driving or was in actual physical control of a motor
32 vehicle within this state while having alcohol in his or her system in
33 a concentration of 0.02 or more and was under the age of twenty-one and
34 that the officer complied with the requirements of this section.

35 A hearing officer shall conduct the hearing, may issue subpoenas
36 for the attendance of witnesses and the production of documents, and
37 shall administer oaths to witnesses. The hearing officer shall not
38 issue a subpoena for the attendance of a witness at the request of the
39 person unless the request is accompanied by the fee required by RCW

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

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

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

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

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

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

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

32 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
33 deny the arrested person's license, permit, or privilege to drive as
34 follows:

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

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

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

9 (2) In the case of an incident where a person has submitted to or
10 been administered a test or tests indicating that the alcohol
11 concentration of the person's breath or blood was (~~(0.10)~~) 0.08 or
12 more:

13 (a) For a first incident within five years, where there has not
14 been a previous incident within five years that resulted in
15 administrative action under this section, placement in probationary
16 status as provided in RCW 46.20.355;

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

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

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

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

28 **Sec. 3.** RCW 46.61.502 and 1994 c 275 s 2 are each amended to read
29 as follows:

30 (1) A person is guilty of driving while under the influence of
31 intoxicating liquor or any drug if the person drives a vehicle within
32 this state:

33 (a) And the person has, within two hours after driving, an alcohol
34 concentration of (~~(0.10)~~) 0.08 or higher as shown by analysis of the
35 person's breath or blood made under RCW 46.61.506; or

36 (b) While the person is under the influence of or affected by
37 intoxicating liquor or any drug; or

1 (c) While the person is under the combined influence of or affected
2 by intoxicating liquor and any drug.

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

7 (3) It is an affirmative defense to a violation of subsection
8 (1)(a) of this section which the defendant must prove by a
9 preponderance of the evidence that the defendant consumed a sufficient
10 quantity of alcohol after the time of driving and before the
11 administration of an analysis of the person's breath or blood to cause
12 the defendant's alcohol concentration to be (~~0.10~~) 0.08 or more
13 within two hours after driving. The court shall not admit evidence of
14 this defense unless the defendant notifies the prosecution prior to the
15 omnibus or pretrial hearing in the case of the defendant's intent to
16 assert the affirmative defense.

17 (4) Analyses of blood or breath samples obtained more than two
18 hours after the alleged driving may be used as evidence that within two
19 hours of the alleged driving, a person had an alcohol concentration of
20 (~~0.10~~) 0.08 or more in violation of subsection (1)(a) of this
21 section, and in any case in which the analysis shows an alcohol
22 concentration above 0.00 may be used as evidence that a person was
23 under the influence of or affected by intoxicating liquor or any drug
24 in violation of subsection (1)(b) or (c) of this section.

25 (5) A violation of this section is a gross misdemeanor.

26 **Sec. 4.** RCW 46.61.504 and 1994 c 275 s 3 are each amended to read
27 as follows:

28 (1) A person is guilty of being in actual physical control of a
29 motor vehicle while under the influence of intoxicating liquor or any
30 drug if the person has actual physical control of a vehicle within this
31 state:

32 (a) And the person has, within two hours after being in actual
33 physical control of the vehicle, an alcohol concentration of (~~0.10~~)
34 0.08 or higher as shown by analysis of the person's breath or blood
35 made under RCW 46.61.506; or

36 (b) While the person is under the influence of or affected by
37 intoxicating liquor or any drug; or

1 (c) While the person is under the combined influence of or affected
2 by intoxicating liquor and any drug.

3 (2) The fact that a person charged with a violation of this section
4 is or has been entitled to use a drug under the laws of this state does
5 not constitute a defense against any charge of violating this section.
6 No person may be convicted under this section if, prior to being
7 pursued by a law enforcement officer, the person has moved the vehicle
8 safely off the roadway.

9 (3) It is an affirmative defense to a violation of subsection
10 (1)(a) of this section which the defendant must prove by a
11 preponderance of the evidence that the defendant consumed a sufficient
12 quantity of alcohol after the time of being in actual physical control
13 of the vehicle and before the administration of an analysis of the
14 person's breath or blood to cause the defendant's alcohol concentration
15 to be ((0.10)) 0.08 or more within two hours after being in such
16 control. The court shall not admit evidence of this defense unless the
17 defendant notifies the prosecution prior to the omnibus or pretrial
18 hearing in the case of the defendant's intent to assert the affirmative
19 defense.

20 (4) Analyses of blood or breath samples obtained more than two
21 hours after the alleged being in actual physical control of a vehicle
22 may be used as evidence that within two hours of the alleged being in
23 such control, a person had an alcohol concentration of ((0.10)) 0.08 or
24 more in violation of subsection (1)(a) of this section, and in any case
25 in which the analysis shows an alcohol concentration above 0.00 may be
26 used as evidence that a person was under the influence of or affected
27 by intoxicating liquor or any drug in violation of subsection (1)(b) or
28 (c) of this section.

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

30 **Sec. 5.** RCW 46.61.506 and 1995 c 332 s 18 are each amended to read
31 as follows:

32 (1) Upon the trial of any civil or criminal action or proceeding
33 arising out of acts alleged to have been committed by any person while
34 driving or in actual physical control of a vehicle while under the
35 influence of intoxicating liquor or any drug, if the person's alcohol
36 concentration is less than ((0.10)) 0.08, it is evidence that may be
37 considered with other competent evidence in determining whether the
38 person was under the influence of intoxicating liquor or any drug.

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

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

16 (4) When a blood test is administered under the provisions of RCW
17 46.20.308, the withdrawal of blood for the purpose of determining its
18 alcoholic or drug content may be performed only by a physician, a
19 registered nurse, or a qualified technician. This limitation shall not
20 apply to the taking of breath specimens.

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

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

32 **Sec. 6.** RCW 88.12.025 and 1993 c 244 s 8 are each amended to read
33 as follows:

34 (1) It shall be unlawful for any person to operate a vessel in a
35 reckless manner.

36 (2) It shall be a violation for a person to operate a vessel while
37 under the influence of intoxicating liquor or any drug. A person is

1 considered to be under the influence of intoxicating liquor or any drug
2 if:

3 (a) The person has (~~0.10~~) 0.08 grams or more of alcohol per two
4 hundred ten liters of breath, as shown by analysis of the person's
5 breath made under RCW 46.61.506; or

6 (b) The person has (~~0.10~~) 0.08 percent or more by weight of
7 alcohol in the person's blood, as shown by analysis of the person's
8 blood made under RCW 46.61.506; or

9 (c) The person is under the influence of or affected by
10 intoxicating liquor or any drug; or

11 (d) The person is under the combined influence of or affected by
12 intoxicating liquor and any drug.

13 The fact that any person charged with a violation of this section
14 is or has been entitled to use such drug under the laws of this state
15 shall not constitute a defense against any charge of violating this
16 section. A person cited under this subsection may upon request be
17 given a breath test for breath alcohol or may request to have a blood
18 sample taken for blood alcohol analysis. An arresting officer shall
19 administer field sobriety tests when circumstances permit.

20 (3) A violation of this section is a misdemeanor, punishable as
21 provided under RCW 9.92.030. In addition, the court may order the
22 defendant to pay restitution for any damages or injuries resulting from
23 the offense.

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