

2 **SSB 5399 - H AMD 145 ADOPTED 4-16-99**

3 By Representative

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5 On page 5, after line 2, insert the following:

6 "Sec. 2. RCW 46.20.308 and 1998 c 213 s 1, 1998 c 209 s 1, 1998 c
7 207 s 7, and 1998 c 41 s 4 are each reenacted and amended to read as
8 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
20 believe the person to have been driving or in actual physical control
21 of a motor vehicle within this state while under the influence of
22 intoxicating liquor or any drug or the person to have been driving or
23 in actual physical control of a motor vehicle while having alcohol in
24 a concentration in violation of RCW 46.61.503 in his or her system and
25 being under the age of twenty-one. However, in those instances where
26 the person is incapable due to physical injury, physical incapacity, or
27 other physical limitation, of providing a breath sample or where the
28 person is being treated in a hospital, clinic, doctor's office,
29 emergency medical vehicle, ambulance, or other similar facility in
30 which a breath testing instrument is not present or where the officer
31 has reasonable grounds to believe that the person is under the
32 influence of a drug, a blood test shall be administered by a qualified
33 person as provided in RCW 46.61.506(4). The officer shall inform the
34 person of his or her right to refuse the breath or blood test, and of
35 his or her right to have additional tests administered by any qualified

1 person of his or her choosing as provided in RCW 46.61.506. The
2 officer shall warn the driver that:

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

5 (b) His or her license, permit, or privilege to drive will be
6 suspended, revoked, or denied if the test is administered and the test
7 indicates the alcohol concentration of the person's breath or blood is
8 0.08 or more, in the case of a person age twenty-one or over, or in
9 violation of RCW 46.61.502, 46.61.503, or 46.61.504 in the case of a
10 person under age twenty-one; and

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

13 (3) Except as provided in this section, the test administered shall
14 be of the breath only. If an individual is unconscious or is under
15 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
16 or vehicular assault as provided in RCW 46.61.522, or if an individual
17 is under arrest for the crime of driving while under the influence of
18 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
19 results from an accident in which there has been serious bodily injury
20 to another person, a breath or blood test may be administered without
21 the consent of the individual so arrested.

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

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

33 (6) If, after arrest and after the other applicable conditions and
34 requirements of this section have been satisfied, a test or tests of
35 the person's blood or breath is administered and the test results
36 indicate that the alcohol concentration of the person's breath or blood
37 is 0.08 or more if the person is age twenty-one or over, or is in
38 violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is
39 under the age of twenty-one, or the person refuses to submit to a test,

1 the arresting officer or other law enforcement officer at whose
2 direction any test has been given, or the department, where applicable,
3 if the arrest results in a test of the person's blood, shall:

4 (a) Serve notice in writing on the person on behalf of the
5 department of its intention to suspend, revoke, or deny the person's
6 license, permit, or privilege to drive as required by subsection (7) of
7 this section;

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

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

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

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

26 (i) That the officer had reasonable grounds to believe the arrested
27 person had been driving or was in actual physical control of a motor
28 vehicle within this state while under the influence of intoxicating
29 liquor or drugs, or both, or was under the age of twenty-one years and
30 had been driving or was in actual physical control of a motor vehicle
31 while having an alcohol concentration in violation of RCW 46.61.503;

32 (ii) That after receipt of the warnings required by subsection (2)
33 of this section the person refused to submit to a test of his or her
34 blood or breath, or a test was administered and the results indicated
35 that the alcohol concentration of the person's breath or blood was 0.08
36 or more if the person is age twenty-one or over, or was in violation of
37 RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age
38 of twenty-one; and

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

1 (7) The department of licensing, upon the receipt of a sworn report
2 or report under a declaration authorized by RCW 9A.72.085 under
3 subsection (6)(e) of this section, shall suspend, revoke, or deny the
4 person's license, permit, or privilege to drive or any nonresident
5 operating privilege, as provided in RCW 46.20.3101, such suspension,
6 revocation, or denial to be effective beginning sixty days from the
7 date of arrest or from the date notice has been given in the event
8 notice is given by the department following a blood test, or when
9 sustained at a hearing pursuant to subsection (8) of this section,
10 whichever occurs first.

11 (8) A person receiving notification under subsection (6)(b) of this
12 section may, within thirty days after the notice has been given,
13 request in writing a formal hearing before the department. The person
14 shall pay a fee of one hundred dollars as part of the request. If the
15 request is mailed, it must be postmarked within thirty days after
16 receipt of the notification. Upon timely receipt of such a request for
17 a formal hearing, including receipt of the required one hundred dollar
18 fee, the department shall afford the person an opportunity for a
19 hearing. The department may waive the required one hundred dollar fee
20 if the person is an indigent as defined in RCW 10.101.010. Except as
21 otherwise provided in this section, the hearing is subject to and shall
22 be scheduled and conducted in accordance with RCW 46.20.329 and
23 46.20.332. The hearing shall be conducted in the county of the arrest,
24 except that all or part of the hearing may, at the discretion of the
25 department, be conducted by telephone or other electronic means. The
26 hearing shall be held within sixty days following the arrest or
27 following the date notice has been given in the event notice is given
28 by the department following a blood test, unless otherwise agreed to by
29 the department and the person, in which case the action by the
30 department shall be stayed, and any valid temporary license marked
31 under subsection (6)(c) of this section extended, if the person is
32 otherwise eligible for licensing. For the purposes of this section,
33 the scope of the hearing shall cover the issues of whether a law
34 enforcement officer had reasonable grounds to believe the person had
35 been driving or was in actual physical control of a motor vehicle
36 within this state while under the influence of intoxicating liquor or
37 any drug or had been driving or was in actual physical control of a
38 motor vehicle within this state while having alcohol in his or her
39 system in a concentration in violation of RCW 46.61.503 and was under

1 the age of twenty-one, whether the person was placed under arrest, and
2 (a) whether the person refused to submit to the test or tests upon
3 request of the officer after having been informed that such refusal
4 would result in the revocation of the person's license, permit, or
5 privilege to drive, or (b) if a test or tests were administered,
6 whether the applicable requirements of this section were satisfied
7 before the administration of the test or tests, whether the person
8 submitted to the test or tests, or whether a test was administered
9 without express consent as permitted under this section, and whether
10 the test or tests indicated that the alcohol concentration of the
11 person's breath or blood was 0.08 or more if the person was age twenty-
12 one or over at the time of the arrest, or was in violation of RCW
13 46.61.502, 46.61.503, or 46.61.504 if the person was under the age of
14 twenty-one at the time of the arrest. The sworn report or report under
15 a declaration authorized by RCW 9A.72.085 submitted by a law
16 enforcement officer is prima facie evidence that the officer had
17 reasonable grounds to believe the person had been driving or was in
18 actual physical control of a motor vehicle within this state while
19 under the influence of intoxicating liquor or drugs, or both, or the
20 person had been driving or was in actual physical control of a motor
21 vehicle within this state while having alcohol in his or her system in
22 a concentration in violation of RCW 46.61.503 and was under the age of
23 twenty-one and that the officer complied with the requirements of this
24 section.

25 A hearing officer shall conduct the hearing, may issue subpoenas
26 for the attendance of witnesses and the production of documents, and
27 shall administer oaths to witnesses. The hearing officer shall not
28 issue a subpoena for the attendance of a witness at the request of the
29 person unless the request is accompanied by the fee required by RCW
30 5.56.010 for a witness in district court. The sworn report or report
31 under a declaration authorized by RCW 9A.72.085 of the law enforcement
32 officer and any other evidence accompanying the report shall be
33 admissible without further evidentiary foundation and the
34 certifications authorized by the criminal rules for courts of limited
35 jurisdiction shall be admissible without further evidentiary
36 foundation. The person may be represented by counsel, may question
37 witnesses, may present evidence, and may testify. The department shall
38 order that the suspension, revocation, or denial either be rescinded or
39 sustained.

1 (9) If the suspension, revocation, or denial is sustained after
2 such a hearing, the person whose license, privilege, or permit is
3 suspended, revoked, or denied has the right to file a petition in the
4 superior court of the county of arrest to review the final order of
5 revocation by the department in the same manner as an appeal from a
6 decision of a court of limited jurisdiction. Notice of appeal must be
7 filed within thirty days after the date the final order is served or
8 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
9 1.1, or other statutes or rules referencing de novo review, the appeal
10 shall be limited to a review of the record of the administrative
11 hearing. The appellant must pay the costs associated with obtaining
12 the record of the hearing before the hearing officer. The filing of
13 the appeal does not stay the effective date of the suspension,
14 revocation, or denial. A petition filed under this subsection must
15 include the petitioner's grounds for requesting review. Upon granting
16 petitioner's request for review, the court shall review the
17 department's final order of suspension, revocation, or denial as
18 expeditiously as possible. The review must be limited to a
19 determination of whether the department has committed any errors of
20 law. The superior court shall accept those factual determinations
21 supported by substantial evidence in the record: (a) That were
22 expressly made by the department; or (b) that may reasonably be
23 inferred from the final order of the department. The superior court
24 may reverse, affirm, or modify the decision of the department or remand
25 the case back to the department for further proceedings. The decision
26 of the superior court must be in writing and filed in the clerk's
27 office with the other papers in the case. The court shall state the
28 reasons for the decision. If judicial relief is sought for a stay or
29 other temporary remedy from the department's action, the court shall
30 not grant such relief unless the court finds that the appellant is
31 likely to prevail in the appeal and that without a stay the appellant
32 will suffer irreparable injury. If the court stays the suspension,
33 revocation, or denial 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 under
36 subsection (7) of this section, other than as a result of a breath or
37 blood test refusal, and who has not committed an offense within the
38 last five years for which he or she was granted a deferred prosecution
39 under chapter 10.05 RCW, petitions a court for a deferred prosecution

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

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

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

31 Renumber the sections consecutively and correct the title and any
32 internal references accordingly.

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