

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1854

Chapter 288, Laws of 2005

59th Legislature
2005 Regular Session

DRIVING PRIVILEGE--REVOCATION

EFFECTIVE DATE: 7/01/05

Passed by the House March 11, 2005
Yeas 93 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 11, 2005
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved May 4, 2005.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1854** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

May 4, 2005 - 3:56 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1854

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By House Committee on Judiciary (originally sponsored by
Representatives Lantz, Priest, Haler, Walsh and Williams)

READ FIRST TIME 03/03/05.

1 AN ACT Relating to withholding of the driving privilege; amending
2 RCW 46.20.265, 46.20.270, 46.20.285, 46.20.289, 46.20.324, 46.20.334,
3 and 46.63.110; adding a new section to chapter 46.20 RCW; prescribing
4 penalties; providing an effective date; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.20 RCW
7 to read as follows:

8 (1) Whenever the department proposes to withhold the driving
9 privilege of a person or disqualify a person from operating a
10 commercial motor vehicle and this action is made mandatory by the
11 provisions of this chapter or other law, the department must give
12 notice to the person in writing by posting in the United States mail,
13 appropriately addressed, postage prepaid, or by personal service.
14 Notice by mail is given upon deposit in the United States mail. Notice
15 given under this subsection must specify the date upon which the
16 driving privilege is to be withheld which shall not be less than forty-
17 five days after the original notice is given.

18 (2) Within fifteen days after notice has been given to a person
19 under subsection (1) of this section, the person may request in writing

1 an administrative review before the department. If the request is
2 mailed, it must be postmarked within fifteen days after the date the
3 department has given notice. If a person fails to request an
4 administrative review within fifteen days after the date the department
5 gives notice, the person is considered to have defaulted and loses his
6 or her right to an administrative review unless the department finds
7 good cause for a request after the fifteen-day period.

8 (a) An administrative review under this subsection shall consist
9 solely of an internal review of documents and records submitted or
10 available to the department, unless the person requests an interview
11 before the department, in which case all or any part of the
12 administrative review may, at the discretion of the department, be
13 conducted by telephone or other electronic means.

14 (b) The only issues to be addressed in the administrative review
15 are:

16 (i) Whether the records relied on by the department identify the
17 correct person; and

18 (ii) Whether the information transmitted from the court or other
19 reporting agency or entity regarding the person accurately describes
20 the action taken by the court or other reporting agency or entity.

21 (c) For the purposes of this section, the notice received from a
22 court or other reporting agency or entity, regardless of form or
23 format, is prima facie evidence that the information from the court or
24 other reporting agency or entity regarding the person is accurate. A
25 person requesting administrative review has the burden of showing by a
26 preponderance of the evidence that the person is not subject to the
27 withholding of the driving privilege.

28 (d) The action subject to the notification requirements of
29 subsection (1) of this section shall be stayed during the
30 administrative review process.

31 (e) Judicial review of a department order affirming the action
32 subject to the notification requirements of subsection (1) of this
33 section after an administrative review shall be available in the same
34 manner as provided in RCW 46.20.308(9). The department shall certify
35 its record to the court within thirty days after service upon the
36 department of the petition for judicial review. The action subject to
37 the notification requirements of subsection (1) of this section shall
38 not automatically be stayed during the judicial review. If judicial

1 relief is sought for a stay or other temporary remedy from the
2 department's action, the court shall not grant relief unless the court
3 finds that the appellant is likely to prevail in the appeal and that
4 without a stay the appellant will suffer irreparable injury.

5 (3) The department may adopt rules that are considered necessary or
6 convenient by the department for purposes of administering this
7 section, including, but not limited to, rules regarding expedited
8 procedures for issuing orders and expedited notice procedures.

9 (4) This section does not apply where an opportunity for an
10 informal settlement, driver improvement interview, or formal hearing is
11 otherwise provided by law or rule of the department.

12 **Sec. 2.** RCW 46.20.265 and 2003 c 20 s 1 are each amended to read
13 as follows:

14 (1) In addition to any other authority to revoke driving privileges
15 under this chapter, the department shall revoke all driving privileges
16 of a juvenile when the department receives notice from a court pursuant
17 to RCW 9.41.040(5), 13.40.265, 66.44.365, 69.41.065, 69.50.420,
18 69.52.070, or a substantially similar municipal ordinance adopted by a
19 local legislative authority, or from a diversion unit pursuant to RCW
20 13.40.265. (~~The revocation shall be imposed without hearing.~~)

21 (2) The driving privileges of the juvenile revoked under subsection
22 (1) of this section shall be revoked in the following manner:

23 (a) Upon receipt of the first notice, the department shall impose
24 a revocation for one year, or until the juvenile reaches seventeen
25 years of age, whichever is longer.

26 (b) Upon receipt of a second or subsequent notice, the department
27 shall impose a revocation for two years or until the juvenile reaches
28 eighteen years of age, whichever is longer.

29 (c) Each offense for which the department receives notice shall
30 result in a separate period of revocation. All periods of revocation
31 imposed under this section that could otherwise overlap shall run
32 consecutively up to the juvenile's twenty-first birthday, and no period
33 of revocation imposed under this section shall begin before the
34 expiration of all other periods of revocation imposed under this
35 section or other law. Periods of revocation imposed consecutively
36 under this section shall not extend beyond the juvenile's twenty-first
37 birthday.

1 (3)(a) If the department receives notice from a court that the
2 juvenile's privilege to drive should be reinstated, the department
3 shall immediately reinstate any driving privileges that have been
4 revoked under this section if the minimum term of revocation as
5 specified in RCW 13.40.265(1)(c), 66.44.365(3), 69.41.065(3),
6 69.50.420(3), 69.52.070(3), or similar ordinance has expired, and
7 subject to subsection (2)(c) of this section.

8 (b) The juvenile may seek reinstatement of his or her driving
9 privileges from the department when the juvenile reaches the age of
10 twenty-one. A notice from the court reinstating the juvenile's driving
11 privilege shall not be required if reinstatement is pursuant to this
12 subsection.

13 (4)(a) If the department receives notice pursuant to RCW
14 13.40.265(2)(b) from a diversion unit that a juvenile has completed a
15 diversion agreement for which the juvenile's driving privileges were
16 revoked, the department shall reinstate any driving privileges revoked
17 under this section as provided in (b) of this subsection, subject to
18 subsection (2)(c) of this section.

19 (b) If the diversion agreement was for the juvenile's first
20 violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department
21 shall not reinstate the juvenile's privilege to drive until the later
22 of ninety days after the date the juvenile turns sixteen or ninety days
23 after the juvenile entered into a diversion agreement for the offense.
24 If the diversion agreement was for the juvenile's second or subsequent
25 violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department
26 shall not reinstate the juvenile's privilege to drive until the later
27 of the date the juvenile turns seventeen or one year after the juvenile
28 entered into the second or subsequent diversion agreement.

29 **Sec. 3.** RCW 46.20.270 and 2004 c 231 s 5 are each amended to read
30 as follows:

31 (1) Whenever any person is convicted of any offense for which this
32 title makes mandatory the (~~suspension or revocation of the driver's~~
33 ~~license~~) withholding of the driving privilege of such person by the
34 department, the (~~privilege of the person to operate a vehicle is~~
35 ~~suspended until the department takes the action required by this~~
36 ~~chapter, and the~~) court in which such conviction is had shall
37 forthwith (~~secure the immediate forfeiture of the driver's license of~~

1 ~~such convicted person and immediately forward such driver's license to~~
2 ~~the department, and on failure of such convicted person to deliver such~~
3 ~~driver's license the judge shall cause such person to be confined for~~
4 ~~the period of such suspension or revocation or until such driver's~~
5 ~~license is delivered to such judge: PROVIDED, That if the convicted~~
6 ~~person testifies that he or she does not and at the time of the offense~~
7 ~~did not have a current and valid vehicle driver's license, the judge~~
8 ~~shall cause such person to be charged with the operation of a motor~~
9 ~~vehicle without a current and valid driver's license and on conviction~~
10 ~~punished as by law provided, and the department may not issue a~~
11 ~~driver's license to such persons during the period of suspension or~~
12 ~~revocation: PROVIDED, ALSO, That if the driver's license of such~~
13 ~~convicted person has been lost or destroyed and such convicted person~~
14 ~~makes an affidavit to that effect, sworn to before the judge, the~~
15 ~~convicted person may not be so confined, but the department may not~~
16 ~~issue or reissue a driver's license for such convicted person during~~
17 ~~the period of such suspension or revocation: PROVIDED, That)) mark the~~
18 ~~person's Washington state driver's license or permit to drive, if any,~~
19 ~~in a manner authorized by the department. A valid driver's license or~~
20 ~~permit to drive marked under this subsection shall remain in effect~~
21 ~~until the person's driving privilege is withheld by the department~~
22 ~~pursuant to notice given under section 1 of this act, unless the~~
23 ~~license or permit expires or otherwise becomes invalid prior to the~~
24 ~~effective date of this action. Perfection of notice of appeal shall~~
25 ~~stay the execution of sentence including the ((~~suspension and/or~~~~
26 ~~revocation of the driver's license)) withholding of the driving~~
27 ~~privilege.~~

28 (2) Every court having jurisdiction over offenses committed under
29 this chapter, or any other act of this state or municipal ordinance
30 adopted by a local authority regulating the operation of motor vehicles
31 on highways, or any federal authority having jurisdiction over offenses
32 substantially the same as those set forth in Title 46 RCW which occur
33 on federal installations within this state, shall forward to the
34 department within ten days of a forfeiture of bail or collateral
35 deposited to secure the defendant's appearance in court, a payment of
36 a fine or penalty, a plea of guilty or a finding of guilt, or a finding
37 that any person has committed a traffic infraction an abstract of the
38 court record in the form prescribed by rule of the supreme court,

1 showing the conviction of any person or the finding that any person has
2 committed a traffic infraction in said court for a violation of any
3 said laws other than regulations governing standing, stopping, parking,
4 and pedestrian offenses.

5 (3) Every state agency or municipality having jurisdiction over
6 offenses committed under this chapter, or under any other act of this
7 state or municipal ordinance adopted by a state or local authority
8 regulating the operation of motor vehicles on highways, may forward to
9 the department within ten days of failure to respond, failure to pay a
10 penalty, failure to appear at a hearing to contest the determination
11 that a violation of any statute, ordinance, or regulation relating to
12 standing, stopping, parking, or other infraction issued under RCW
13 46.63.030(1)(d) has been committed, or failure to appear at a hearing
14 to explain mitigating circumstances, an abstract of the citation record
15 in the form prescribed by rule of the department, showing the finding
16 by such municipality that two or more violations of laws governing
17 standing, stopping, and parking or one or more other infractions issued
18 under RCW 46.63.030(1)(d) have been committed and indicating the nature
19 of the defendant's failure to act. Such violations or infractions may
20 not have occurred while the vehicle is stolen from the registered owner
21 or is leased or rented under a bona fide commercial vehicle lease or
22 rental agreement between a lessor engaged in the business of leasing
23 vehicles and a lessee who is not the vehicle's registered owner. The
24 department may enter into agreements of reciprocity with the duly
25 authorized representatives of the states for reporting to each other
26 violations of laws governing standing, stopping, and parking.

27 (4) For the purposes of Title 46 RCW the term "conviction" means a
28 final conviction in a state or municipal court or by any federal
29 authority having jurisdiction over offenses substantially the same as
30 those set forth in Title 46 RCW which occur on federal installations in
31 this state, an unvacated forfeiture of bail or collateral deposited to
32 secure a defendant's appearance in court, the payment of a fine, a plea
33 of guilty, or a finding of guilt on a traffic law violation charge,
34 regardless of whether the imposition of sentence or sanctions are
35 deferred or the penalty is suspended, but not including entry into a
36 deferred prosecution agreement under chapter 10.05 RCW.

37 (5) For the purposes of Title 46 RCW the term "finding that a
38 traffic infraction has been committed" means a failure to respond to a

1 notice of infraction or a determination made by a court pursuant to
2 this chapter. Payment of a monetary penalty made pursuant to RCW
3 46.63.070(2) is deemed equivalent to such a finding.

4 **Sec. 4.** RCW 46.20.285 and 2001 c 64 s 6 are each amended to read
5 as follows:

6 The department shall (~~forthwith~~) revoke the license of any driver
7 for the period of one calendar year unless otherwise provided in this
8 section, upon receiving a record of the driver's conviction of any of
9 the following offenses, when the conviction has become final:

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

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

15 (3) Driving a motor vehicle while under the influence of
16 intoxicating liquor or a narcotic drug, or under the influence of any
17 other drug to a degree which renders the driver incapable of safely
18 driving a motor vehicle, for the period prescribed in RCW 46.61.5055;

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

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

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

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

30 **Sec. 5.** RCW 46.20.289 and 2002 c 279 s 4 are each amended to read
31 as follows:

32 The department shall suspend all driving privileges of a person
33 when the department receives notice from a court under RCW
34 46.63.070(6), 46.63.110(~~(+5)~~) (6), or 46.64.025 that the person has
35 failed to respond to a notice of traffic infraction, failed to appear
36 at a requested hearing, violated a written promise to appear in court,

1 or has failed to comply with the terms of a notice of traffic
2 infraction or citation, other than for a standing, stopping, or parking
3 violation, provided that the traffic infraction or traffic offense is
4 committed on or after the effective date of this act. A suspension
5 under this section takes effect (~~(thirty days after the date the~~
6 ~~department mails notice of the suspension))~~ pursuant to the provisions
7 of section 1 of this act, and remains in effect until the department
8 has received a certificate from the court showing that the case has
9 been adjudicated, and until the person meets the requirements of RCW
10 46.20.311. In the case of failure to respond to a traffic infraction
11 issued under RCW 46.55.105, the department shall suspend all driving
12 privileges until the person provides evidence from the court that all
13 penalties and restitution have been paid. A suspension under this
14 section does not take effect if, prior to the effective date of the
15 suspension, the department receives a certificate from the court
16 showing that the case has been adjudicated.

17 **Sec. 6.** RCW 46.20.324 and 1965 ex.s. c 121 s 31 are each amended
18 to read as follows:

19 Unless otherwise provided by law, a person shall not be entitled to
20 a driver improvement interview or formal hearing ((as hereinafter
21 ~~provided))~~ under the provisions of RCW 46.20.322 through 46.20.333 when
22 the person:

23 (1) (~~(When the action by the department is made mandatory by the~~
24 ~~provisions of this chapter or other law))~~ Has been granted the
25 opportunity for an administrative review, informal settlement, or
26 formal hearing under section 1 of this act, RCW 46.20.308, 46.25.120,
27 46.25.125, 46.65.065, 74.20A.320, or by rule of the department; or

28 (2) (~~(When the person))~~ Has refused or neglected to submit to an
29 examination as required by RCW 46.20.305.

30 **Sec. 7.** RCW 46.20.334 and 1972 ex.s. c 29 s 4 are each amended to
31 read as follows:

32 Unless otherwise provided by law, any person denied a license or a
33 renewal of a license or whose license has been suspended or revoked by
34 the department ((except where such suspension or revocation is
35 ~~mandatory under the provisions of this chapter))~~ shall have the right
36 within thirty days, after receiving notice of the decision following a

1 formal hearing to file a notice of appeal in the superior court in the
2 county of his residence. The hearing on the appeal hereunder shall be
3 de novo.

4 **Sec. 8.** RCW 46.63.110 and 2003 c 380 s 2 are each amended to read
5 as follows:

6 (1) A person found to have committed a traffic infraction shall be
7 assessed a monetary penalty. No penalty may exceed two hundred and
8 fifty dollars for each offense unless authorized by this chapter or
9 title.

10 (2) The monetary penalty for a violation of RCW 46.55.105(2) is two
11 hundred fifty dollars for each offense. No penalty assessed under this
12 subsection (2) may be reduced.

13 (3) The supreme court shall prescribe by rule a schedule of
14 monetary penalties for designated traffic infractions. This rule shall
15 also specify the conditions under which local courts may exercise
16 discretion in assessing fines and penalties for traffic infractions.
17 The legislature respectfully requests the supreme court to adjust this
18 schedule every two years for inflation.

19 (4) There shall be a penalty of twenty-five dollars for failure to
20 respond to a notice of traffic infraction except where the infraction
21 relates to parking as defined by local law, ordinance, regulation, or
22 resolution or failure to pay a monetary penalty imposed pursuant to
23 this chapter. A local legislative body may set a monetary penalty not
24 to exceed twenty-five dollars for failure to respond to a notice of
25 traffic infraction relating to parking as defined by local law,
26 ordinance, regulation, or resolution. The local court, whether a
27 municipal, police, or district court, shall impose the monetary penalty
28 set by the local legislative body.

29 (5) Monetary penalties provided for in chapter 46.70 RCW which are
30 civil in nature and penalties which may be assessed for violations of
31 chapter 46.44 RCW relating to size, weight, and load of motor vehicles
32 are not subject to the limitation on the amount of monetary penalties
33 which may be imposed pursuant to this chapter.

34 (6) Whenever a monetary penalty, fee, cost, assessment, or other
35 monetary obligation is imposed by a court under this chapter it is
36 immediately payable. If the ~~((person is unable to pay at that time the~~
37 ~~court may, in its discretion, grant an extension of the period in which~~

1 ~~the penalty may be paid. If the penalty is not paid on or before the~~
2 ~~time established for payment the court shall notify the department of~~
3 ~~the failure to pay the penalty))~~ court determines, in its discretion,
4 that a person is not able to pay a monetary obligation in full, and not
5 more than one year has passed since the later of the effective date of
6 this act or the date the monetary obligation initially became due and
7 payable, the court shall enter into a payment plan with the person,
8 unless the person has previously been granted a payment plan with
9 respect to the same monetary obligation, or unless the person is in
10 noncompliance of any existing or prior payment plan, in which case the
11 court may, at its discretion, implement a payment plan. If the court
12 has notified the department that the person has failed to pay or comply
13 and the person has subsequently entered into a payment plan and made an
14 initial payment, the court shall notify the department that the
15 infraction has been adjudicated, and the department shall rescind any
16 suspension of the person's driver's license or driver's privilege based
17 on failure to respond to that infraction. "Payment plan," as used in
18 this section, means a plan that requires reasonable payments based on
19 the financial ability of the person to pay. The person may voluntarily
20 pay an amount at any time in addition to the payments required under
21 the payment plan.

22 (a) If a payment required to be made under the payment plan is
23 delinquent or the person fails to complete a community restitution
24 program on or before the time established under the payment plan,
25 unless the court determines good cause therefor and adjusts the payment
26 plan or the community restitution plan accordingly, the court shall
27 notify the department of the person's failure to meet the conditions of
28 the plan, and the department shall suspend the person's driver's
29 license or driving privilege until ((the penalty has)) all monetary
30 obligations, including those imposed under subsections (3) and (4) of
31 this section, have been paid ((and the penalty provided in subsection
32 (4) of this section has been paid)), and court authorized community
33 restitution has been completed, or until the department has been
34 notified that the court has entered into a new time payment or
35 community restitution agreement with the person.

36 (b) If a person has not entered into a payment plan with the court
37 and has not paid the monetary obligation in full on or before the time
38 established for payment, the court shall notify the department of the

1 delinquency. The department shall suspend the person's driver's
2 license or driving privilege until all monetary obligations have been
3 paid, including those imposed under subsections (3) and (4) of this
4 section, or until the person has entered into a payment plan under this
5 section.

6 (c) If the payment plan is to be administered by the court, the
7 court may assess the person a reasonable administrative fee to be
8 wholly retained by the city or county with jurisdiction. The
9 administrative fee shall not exceed ten dollars per infraction or
10 twenty-five dollars per payment plan, whichever is less.

11 (d) Nothing in this section precludes a court from contracting with
12 outside entities to administer its payment plan system. When outside
13 entities are used for the administration of a payment plan, the court
14 may assess the person a reasonable fee for such administrative
15 services, which fee may be calculated on a periodic, percentage, or
16 other basis.

17 (e) If a court authorized community restitution program for
18 offenders is available in the jurisdiction, the court may allow
19 conversion of all or part of the monetary obligations due under this
20 section to court authorized community restitution in lieu of time
21 payments if the person is unable to make reasonable time payments.

22 (7) In addition to any other penalties imposed under this section
23 and not subject to the limitation of subsection (1) of this section, a
24 person found to have committed a traffic infraction shall be assessed
25 a fee of five dollars per infraction. Under no circumstances shall
26 this fee be reduced or waived. Revenue from this fee shall be
27 forwarded to the state treasurer for deposit in the emergency medical
28 services and trauma care system trust account under RCW 70.168.040.

29 (8)(a) In addition to any other penalties imposed under this
30 section and not subject to the limitation of subsection (1) of this
31 section, a person found to have committed a traffic infraction other
32 than of RCW 46.61.527 shall be assessed an additional penalty of twenty
33 dollars. The court may not reduce, waive, or suspend the additional
34 penalty unless the court finds the offender to be indigent. If a court
35 authorized community restitution program for offenders is available in
36 the jurisdiction, the court shall allow offenders to offset all or a
37 part of the penalty due under this subsection (8) by participation in
38 the court authorized community restitution program.

1 (b) Eight dollars and fifty cents of the additional penalty under
2 (a) of this subsection shall be remitted to the state treasurer. The
3 remaining revenue from the additional penalty must be remitted under
4 chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted
5 under this subsection to the state treasurer must be deposited as
6 provided in RCW 43.08.250. The balance of the revenue received by the
7 county or city treasurer under this subsection must be deposited into
8 the county or city current expense fund. Moneys retained by the city
9 or county under this subsection shall constitute reimbursement for any
10 liabilities under RCW 43.135.060.

11 (9) If a legal proceeding, such as garnishment, has commenced to
12 collect any delinquent amount owed by the person for any penalty
13 imposed by the court under this section, the court may, at its
14 discretion, enter into a payment plan.

15 NEW SECTION. Sec. 9. This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of the
17 state government and its existing public institutions, and takes effect
18 July 1, 2005.

Passed by the House March 11, 2005.

Passed by the Senate April 11, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.