
SUBSTITUTE HOUSE BILL 2309

State of Washington

52nd Legislature

1992 Regular Session

By House Committee on Judiciary (originally sponsored by Representative Inslee)

Read first time 02/07/92.

1 AN ACT Relating to license revocation warnings for failure to
2 submit to breath or blood alcohol tests; and amending RCW 46.20.308.

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

4 **Sec. 1.** RCW 46.20.308 and 1989 c 337 s 8 are each amended to read
5 as follows:

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

1 (2) The test or tests of breath shall be administered at the
2 direction of a law enforcement officer having reasonable grounds to
3 believe the person to have been driving or in actual physical control
4 of a motor vehicle within this state while under the influence of
5 intoxicating liquor. However, in those instances where: (a) The
6 person is incapable due to physical injury, physical incapacity, or
7 other physical limitation, of providing a breath sample; or (b) as a
8 result of a traffic accident the person is being treated for a medical
9 condition in a hospital, clinic, doctor's office, or other similar
10 facility in which a breath testing instrument is not present, a blood
11 test shall be administered by a qualified person as provided in RCW
12 46.61.506(4). The officer shall inform the person of his or her right
13 to refuse the breath or blood test, and of his or her right to have
14 additional tests administered by any qualified person of his or her
15 choosing as provided in RCW 46.61.506. The officer shall warn the
16 driver that (a) his or her privilege to drive will be revoked or denied
17 if he or she refuses to submit to the test, and (b) that his or her
18 refusal to take the test may be used in a criminal trial. The officer
19 shall warn the driver that the person's driving privilege will be
20 revoked or denied for one year for the first refusal in five years to
21 submit to the test, and will be revoked or denied for two years for the
22 second refusal in five years to submit to the test.

23 (3) Except as provided in this section, the test administered shall
24 be of the breath only. If an individual is unconscious or is under
25 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
26 or vehicular assault as provided in RCW 46.61.522, or if an individual
27 is under arrest for the crime of driving while under the influence of
28 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
29 results from an accident in which another person has been injured and
30 there is a reasonable likelihood that such other person may die as a

1 result of injuries sustained in the accident, a breath or blood test
2 may be administered without the consent of the individual so arrested.

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

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

14 (6) The department of licensing, upon the receipt of a sworn report
15 of the law enforcement officer that the officer had reasonable grounds
16 to believe the arrested person had been driving or was in actual
17 physical control of a motor vehicle within this state while under the
18 influence of intoxicating liquor and that the person had refused to
19 submit to the test or tests upon the request of the law enforcement
20 officer after being informed that refusal would result in the
21 revocation of the person's privilege to drive, shall revoke the
22 person's license or permit to drive or any nonresident operating
23 privilege.

24 (7) Upon revoking the license or permit to drive or the nonresident
25 operating privilege of any person, the department shall immediately
26 notify the person involved in writing by personal service or by
27 certified mail of its decision and the grounds therefor, and of the
28 person's right to a hearing, specifying the steps he or she must take
29 to obtain a hearing. Within fifteen days after the notice has been
30 given, the person may, in writing, request a formal hearing. Upon

1 receipt of such request, the department shall afford the person an
2 opportunity for a hearing as provided in RCW 46.20.329 and 46.20.332.
3 The hearing shall be conducted in the county of the arrest. For the
4 purposes of this section, the scope of such hearing shall cover the
5 issues of whether a law enforcement officer had reasonable grounds to
6 believe the person had been driving or was in actual physical control
7 of a motor vehicle within this state while under the influence of
8 intoxicating liquor, whether the person was placed under arrest, and
9 whether the person refused to submit to the test or tests upon request
10 of the officer after having been informed that such refusal would
11 result in the revocation of the person's privilege to drive. The
12 department shall order that the revocation either be rescinded or
13 sustained. Any decision by the department revoking a person's driving
14 privilege shall be stayed and shall not take effect while a formal
15 hearing is pending as provided in this section or during the pendency
16 of a subsequent appeal to superior court so long as there is no
17 conviction for a moving violation or no finding that the person has
18 committed a traffic infraction that is a moving violation during
19 pendency of the hearing and appeal.

20 (8) If the revocation is sustained after such a hearing, the person
21 whose license, privilege, or permit is revoked has the right to file a
22 petition in the superior court of the county of arrest to review the
23 final order of revocation by the department in the manner provided in
24 RCW 46.20.334.

25 (9) 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 revoked, the department shall give information
28 in writing of the action taken to the motor vehicle administrator of
29 the state of the person's residence and of any state in which he or she
30 has a license.