

HOUSE BILL REPORT

HB 1942

As Reported By House Committee On:

Law & Justice

Title: An act relating to driving while under the influence of intoxicating liquor or any drug.

Brief Description: Revising procedures concerning driving while under the influence of intoxicating liquor or drugs.

Sponsors: Representatives Robertson, Delvin, Smith, Brown, Ballasiotes, McMahan, Sheldon, L. Thomas, Padden, Mulliken, Mielke, Chappell, Campbell, Benton, Honeyford, Thompson, Schoesler and Mitchell.

Brief History:

Committee Activity:

Law & Justice: 2/28/95, 3/1/95 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Costa, Assistant Ranking Minority Member; Campbell; Carrell; Chappell; Cody; Lambert; McMahan; Robertson; Sheahan; Smith and Veloria.

Minority Report: Do not pass. Signed by 3 members: Representatives Appelwick, Ranking Minority Member; Morris and Thibaudeau.

Staff: Bill Perry (786-7123).

Background: The crime of driving while under the influence (DUI) can be committed in either of two ways. A person who is "under the influence" may be convicted of the crime regardless of the amount of alcohol shown to be in his or her system by a blood or breath test. However, the more common way in which a person commits the offense of drunk driving law is by what is called a "per se" violation.

A driver with more than a legally prescribed amount of alcohol in his or her system is said to have committed a "per se" violation. That is, the offense is purely a matter of alcohol concentration and is not related to the extent of apparent impairment the

driver may have. In most DUI cases, blood or breath alcohol concentration (BAC) evidence is available and is presented to show a per se offense. A BAC of "0.10" or more is a per se violation. (The 0.10 means either 0.10 grams of alcohol per 210 liters of breath, or 0.10 percent by weight of alcohol in the blood. By virtue of the so-called partition ratio, these breath and blood amounts are taken to be equivalent.)

A person who has been lawfully stopped for DUI may be subject to administrative action and criminal prosecution.

ADMINISTRATIVE ACTION. A person who registers 0.10 or more on a BAC test is subject to the following administrative actions: For a first such per se violation, issuance of a probationary license which allows the person to drive normally, but which has penalty consequences if the person is subsequently convicted for another drunk driving offense; and for a second per se violation within five years, revocation for two years. A suspension or revocation will be stayed if the person is granted a deferred prosecution on criminal charges arising out of the same offense that triggered the administrative action. An administrative sanction runs consecutively to any license suspension or revocation imposed as part of a criminal conviction arising out of the same incident.

Administrative suspension or revocation also applies to any minor driver with a BAC of 0.02 or higher. For purposes of this provision a "minor" is anyone under the age of 21. Unlike the 0.10 per se standard in the drunk driving law, the 0.02 standard is not a criminal one, although another law (the "minor in possession" law) makes it generally illegal for a minor to have alcohol in his or her system in any quantity, whether the minor is driving or not. The administrative sanctions for a violation of the 0.02 standard by a minor are as follows: For a first violation, suspension for 90 days; and for a second violation within five years, revocation for one year or until age 21, whichever is longer.

Under the Implied Consent Law, each licensed driver has agreed to take a test of his or her alcohol concentration whenever a police officer has reasonable grounds to believe the driver has committed DUI. Refusal to take a BAC results in administrative loss of driving privileges, regardless of whether criminal charges are filed. The administrative sanctions for violating the implied consent law are as follows: For a first refusal, revocation for one year; and for a second refusal within five years, revocation for two years.

As part of the Implied Consent Law, an arresting officer is required to give a driver certain warnings about the consequences of refusing to take a BAC test. At least some trial courts have held that in light of changes made to the drunk driving law in 1994, these warnings are no longer adequate because there are now administrative consequences for taking the test and failing it. Questions have also been raised about the "reasonable grounds" for arrest standard and whether it is equivalent to a

requirement for "probable cause." Probable cause has been said to exist "where the totality of the facts and circumstances known to the officers at the time of arrest would warrant a reasonably cautious person to believe an offense is being committed."

A variety of provisions apply to the administrative suspension or revocation of drivers' licenses. These provisions relate to how and when a person may request a hearing before the Department of Licensing (DOL), what must be proved in a contested case, and how a DOL administrative action may be appealed. There are differences among these provisions depending on whether the action is based on an Implied Consent Law refusal, a per se violation of the 0.10 standard, or a violation by a minor of the 0.02 standard. For instance, an appeal from a revocation under the Implied Consent Law is to superior court on a "do novo" basis, which means that the court will hear the case anew as though it were a new trial. On the other hand, appeals to superior courts from administrative actions for per se violations are "on the record" which means that the court considers only the record of the DOL hearing. Except in the case of a minor who violates the 0.02 standard, a person subject to administrative action must pay a fee of \$100 in order to request a hearing before DOL.

CRIMINAL PENALTIES. A person convicted of DUI is subject to jail time, fines, loss of driving privileges and five years of having his or her driving privileges in a probationary status. The severity of criminal penalties depends on both the prior DUI history of the person and the level of any BAC reading on the current offense.

If a person is convicted of DUI for the first time within five years and his or her driver's license is not in a probationary, suspended, or revoked status, the following apply if the person's BAC is at least 0.10 but less than 0.15, or if there is no BAC evidence for reason other than the person's refusal to take a BAC test:

- o Imprisonment for not less than one day nor more than one year;
- o A fine of \$350 to \$5000; and
- o A suspension of his or her driver's license for 90 days. The court may suspend all or part of the 90 days upon a plea agreement by the prosecutor and the defendant. (This provision has been the subject of criticism as an invalid delegation of judicial authority to the prosecutor.)

If a person is convicted of DUI for the first time within five years and his or her driver's license is not in a probationary, suspended, or revoked status, the following apply if the person's BAC is 0.15 or more, or if there is no BAC evidence because of the person's refusal to take a BAC test:

- o Imprisonment for not less than two days nor more than one year;
- o A fine of \$500 to \$5000; and
- o Suspension of his or her driver's license for 120 days. In addition, the person's driver's license is considered to be in a probationary status for five years.

If a person is convicted of DUI for a second time within five years, or if the person's license was suspended at the time of the offense, the following apply:

- o Imprisonment for not less than 90 days nor more than one year;
- o A fine of \$750 to \$5000; and
- o Revocation of his or her driver's license for two years.

A person who has not been convicted of DUI within the previous five years, but whose driver's license is in a probationary status when he or she violates the DUI law and who has an alcohol concentration of at least 0.10, but less than 0.15, will be punished by imprisonment for not less than seven days nor more than one year, a fine of \$500 to \$5000, and suspension of his or her driver's license for one year.

A person who has not been convicted of DUI within the previous five years, but whose driver's license is in a probationary status when he or she violates the DUI law and who has an alcohol concentration of 0.15 or more, or who refuses to submit to the breathalyzer will be punished by imprisonment for 10 days to one year, a fine of \$750 to \$5000 and revocation of his or her driver's license for 450 days.

In addition to the fines prescribed in the DUI law, a person convicted of DUI is subject to other assessments, including a fee of \$125 that goes in part to the state toxicology laboratory for blood testing and to the Washington State Patrol breath testing program. This fee is scheduled to expire on July 1, 1995.

Summary of Substitute Bill: The state's DUI law is amended both with respect to administrative actions and criminal prosecutions.

ADMINISTRATIVE ACTION. Various changes are made regarding the administrative suspension or revocation of driving privileges of a person who violates the Implied Consent Law by refusing a BAC test, or who takes and fails a BAC test. The procedural requirements for requesting, conducting, and appealing an administrative hearing on an Implied Consent Law violation, or a per se violation of the 0.10 BAC standard, or a per se violation of the 0.02 BAC standard for minors, are consolidated into a single provision.

The consolidated administrative procedures for handling these violations include the following:

- o Additional warnings must be provided for persons under the Implied Consent Law. In addition to being warned that refusal to take a BAC test will result in administrative license sanctions, a person must be warned that taking the test and failing it will also result in administrative sanctions.
- o The requirement that an arresting officer must issue a temporary license is replaced with a provision that allows the officer to mark the license so that it will serve as a temporary 60-day license.
- o A person has 30 days from arrest to request a hearing before DOL. DOL has 60 days from arrest to conduct the hearing if one is requested. A person requesting a hearing need not pay a fee. However, a \$100 fee is collectible from the person after the hearing if the person does not prevail.
- o A hearing is to be conducted in the county of arrest unless DOL chooses to conduct the hearing by phone or other electronic means.
- o The arresting officer's sworn report is prima facie evidence that the officer had reasonable grounds to make an arrest and that the officer complied with applicable requirements, such as giving the necessary warning.
- o Except in the case of a refusal to take a BAC test, a person's temporary driving privileges may be extended by up to 90 days if the person petitions for a deferred prosecution of criminal charges arising out of the same incident. Except for refusal cases, obtaining a deferred prosecution will stay the administrative suspension or revocation.
- o All appeals from a DOL administrative suspension or revocation are "on the record."
- o An appeal from a DOL administrative action does not stay the action pending the appeal, unless the court finds that the appellant is likely to prevail on appeal and that failure to grant a stay will result in irreparable harm to the appellant.

The following administrative license sanctions apply to Implied Consent Law refusals and administrative per se violations:

- o Refusals. For a first refusal, revocation for one year; for a second refusal within five years (or a first refusal when there has been a drunk driving incident in the previous five years), revocation for two years or until age 21. (Administrative

revocations for refusals run consecutively to any criminal suspension or revocation.)

- o Administrative per se for BACs over 0.10. For a first violation, probationary license status for five years; for a second violation within five years, revocation for two years.
- o Administrative per se for minors with BACs over 0.02. For a first violation, suspension for 90 days; for a second violation within five years, revocation for one year or until age 21, whichever is longer.

CRIMINAL PENALTIES. The criminal penalties for DUI are changed. Penalty differentials for BAC levels and for probationary status are eliminated.

For a first DUI within five years, the following apply:

- o Imprisonment for not less than one day nor more than one year;
- o A fine of not less than \$350 nor more than \$5,000; and
- o Suspension of the driver's license for 90 days. The judge may suspend all or part of this 90-day period of suspension.

For a second DUI within five years, the following apply:

- o Imprisonment for not less than seven days nor more than one year;
- o A fine of not less than \$500 nor more than \$5,000; and
- o Revocation of the driver's license for one year.

For a third DUI within five years, the following apply:

- o Imprisonment for not less than 90 days nor more than one year;
- o A fine of not less than \$1,000 nor more than \$5,000; and
- o Revocation of the driver's license for two years.

MISCELLANEOUS.

An arresting officer is given authority under the Implied Consent Law to request a blood test for drugs when there are reasonable grounds to believe the driver is under the influence of drugs.

For purposes of law enforcement decisions regarding DUI, the phrase "reasonable grounds" means "probable cause."

The July 1, 1995 termination date for the \$125 blood and breath test fee is repealed.

Substitute Bill Compared to Original Bill: The substitute bill makes numerous technical and grammatical changes. In addition, it eliminates a provision that would make a third DUI offense within five years a class C felony, and restores the provisions on administrative actions for minors with BACs above 0.02.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect September 1, 1995, except for Sections 16 and 25 which deal with the extension of the \$125 fee for blood and breath testing and which take effect immediately.

Testimony For: The bill makes necessary technical corrections to the current law and greatly simplifies and streamlines both the administrative and criminal provisions.

Testimony Against: None.

Testified: Representative Robertson, prime sponsor (pro); Chuck Foster, Office of the Administrator for the Courts and Board of Judicial Administration (pro); Melanie Stewart, Municipal and District Court Judges Association (pro); Tim Erickson, Washington State Patrol (pro with amendments); Linda Grant, citizen (pro); Tom McBride, Washington Association of Prosecuting Attorneys (pro with amendments); Steve Lind, Washington Traffic Safety Commission (with suggestions); and Gene Andre, Mothers Against Drunk Drivers (with concerns).