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HOUSE BILL 2412

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State of Washington

54th Legislature

1996 Regular Session

By Representatives Hickel, Mitchell, Foreman, Costa, Pennington,  
Thompson, McMahan and Benton

Read first time 01/10/96. Referred to Committee on Law & Justice.

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

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

5 **Sec. 1.** RCW 46.61.502 and 1994 c 275 s 2 are each amended to read  
6 as follows:

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

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

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

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

17 (2) The fact that a person charged with a violation of this section  
18 is or has been entitled to use a drug under the laws of this state

1 shall not constitute a defense against a charge of violating this  
2 section.

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

13 (4) Analyses of blood or breath samples obtained more than two  
14 hours after the alleged driving may be used as evidence that within two  
15 hours of the alleged driving, a person had an alcohol concentration of  
16 (~~0.10~~) 0.08 or more in violation of subsection (1)(a) of this  
17 section, and in any case in which the analysis shows an alcohol  
18 concentration above 0.00 may be used as evidence that a person was  
19 under the influence of or affected by intoxicating liquor or any drug  
20 in violation of subsection (1)(b) or (c) of this section.

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

22 **Sec. 2.** RCW 46.61.504 and 1994 c 275 s 3 are each amended to read  
23 as follows:

24 (1) A person is guilty of being in actual physical control of a  
25 motor vehicle while under the influence of intoxicating liquor or any  
26 drug if the person has actual physical control of a vehicle within this  
27 state:

28 (a) And the person has, within two hours after being in actual  
29 physical control of the vehicle, an alcohol concentration of (~~0.10~~)  
30 0.08 or higher as shown by analysis of the person's breath or blood  
31 made under RCW 46.61.506; or

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

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

36 (2) The fact that a person charged with a violation of this section  
37 is or has been entitled to use a drug under the laws of this state does  
38 not constitute a defense against any charge of violating this section.

1 No person may be convicted under this section if, prior to being  
2 pursued by a law enforcement officer, the person has moved the vehicle  
3 safely off the roadway.

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

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

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

25 **Sec. 3.** RCW 46.61.506 and 1995 c 332 s 18 are each amended to read  
26 as follows:

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

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

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

11 (4) When a blood test is administered under the provisions of RCW  
12 46.20.308, the withdrawal of blood for the purpose of determining its  
13 alcoholic or drug content may be performed only by a physician, a  
14 registered nurse, or a qualified technician. This limitation shall not  
15 apply to the taking of breath specimens.

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

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

27 **Sec. 4.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to read  
28 as follows:

29 (1) Any person who operates a motor vehicle within this state is  
30 deemed to have given consent, subject to the provisions of RCW  
31 46.61.506, to a test or tests of his or her breath or blood for the  
32 purpose of determining the alcohol concentration or presence of any  
33 drug in his or her breath or blood if arrested for any offense where,  
34 at the time of the arrest, the arresting officer has reasonable grounds  
35 to believe the person had been driving or was in actual physical  
36 control of a motor vehicle while under the influence of intoxicating  
37 liquor or any drug or was in violation of RCW 46.61.503.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (ii) That after receipt of the warnings required by subsection (2)  
12 of this section the person refused to submit to a test of his or her  
13 blood or breath, or a test was administered and the results indicated  
14 that the alcohol concentration of the person's breath or blood was  
15 ((0.10)) 0.08 or more if the person is age twenty-one or over, or was  
16 0.02 or more if the person is under the age of twenty-one; and

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

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

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

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

1 A hearing officer shall conduct the hearing, may issue subpoenas  
2 for the attendance of witnesses and the production of documents, and  
3 shall administer oaths to witnesses. The hearing officer shall not  
4 issue a subpoena for the attendance of a witness at the request of the  
5 person unless the request is accompanied by the fee required by RCW  
6 5.56.010 for a witness in district court. The sworn report or report  
7 under a declaration authorized by RCW 9A.72.085 of the law enforcement  
8 officer and any other evidence accompanying the report shall be  
9 admissible without further evidentiary foundation and the  
10 certifications authorized by the criminal rules for courts of limited  
11 jurisdiction shall be admissible without further evidentiary  
12 foundation. The person may be represented by counsel, may question  
13 witnesses, may present evidence, and may testify. The department shall  
14 order that the suspension, revocation, denial, or placement in  
15 probationary status either be rescinded or sustained.

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

37 (10) If a person whose driver's license, permit, or privilege to  
38 drive has been or will be suspended, revoked, denied, or placed in  
39 probationary status under subsection (7) of this section, other than as

1 a result of a breath test refusal, and who has not committed an offense  
2 within the last five years for which he or she was granted a deferred  
3 prosecution under chapter 10.05 RCW, petitions a court for a deferred  
4 prosecution on criminal charges arising out of the arrest for which  
5 action has been or will be taken under subsection (7) of this section,  
6 the court may direct the department to stay any actual or proposed  
7 suspension, revocation, denial, or placement in probationary status for  
8 at least forty-five days but not more than ninety days. If the court  
9 stays the suspension, revocation, denial, or placement in probationary  
10 status, it may impose conditions on such stay. If the person is  
11 otherwise eligible for licensing, the department shall issue a  
12 temporary license, or extend any valid temporary license marked under  
13 subsection (6) of this section, for the period of the stay. If a  
14 deferred prosecution treatment plan is not recommended in the report  
15 made under RCW 10.05.050, or if treatment is rejected by the court, or  
16 if the person declines to accept an offered treatment plan, or if the  
17 person violates any condition imposed by the court, then the court  
18 shall immediately direct the department to cancel the stay and any  
19 temporary marked license or extension of a temporary license issued  
20 under this subsection.

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

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

35 **Sec. 5.** RCW 46.20.3101 and 1995 c 332 s 3 are each amended to read  
36 as follows:

1 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or  
2 deny the arrested person's license, permit, or privilege to drive as  
3 follows:

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

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

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

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

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

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

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

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

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

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

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

1 (2) It shall be a violation for a person to operate a vessel while  
2 under the influence of intoxicating liquor or any drug. A person is  
3 considered to be under the influence of intoxicating liquor or any drug  
4 if:

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

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

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

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

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

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

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