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SENATE BILL 6128

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State of Washington

54th Legislature

1996 Regular Session

By Senators McCaslin, Schow and Oke

Read first time 01/08/96. Referred to Committee on Law & Justice.

1 AN ACT Relating to implied consent for testing of drivers involved  
2 in fatal accidents; and amending RCW 46.20.308 and 46.25.120.

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

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

6 (1)(a) 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 alcohol concentration or presence of any  
10 drug in his or her breath or blood if arrested for any offense where,  
11 at the time of the arrest, the arresting officer has reasonable grounds  
12 to believe the person had been driving or was in actual physical  
13 control of a motor vehicle while under the influence of intoxicating  
14 liquor or any drug or was in violation of RCW 46.61.503.

15 (b) Any person who operates a motor vehicle within this state is  
16 deemed to have given consent, subject to the provisions of RCW  
17 46.61.506, to a test or tests of his or her breath or blood for the  
18 purpose of determining the alcohol concentration or presence of any  
19 drug in his or her breath or blood when the person had been driving or

1 was in actual physical control of a motor vehicle and the vehicle was  
2 involved in a fatal accident and an officer has reasonable grounds to  
3 believe the person had been driving or was in actual physical control  
4 of a motor vehicle while having alcohol or any drug in his or her  
5 system.

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

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

30 (b) His or her license, permit, or privilege to drive will be  
31 suspended, revoked, denied, or placed in probationary status if the  
32 test is administered and the test indicates the alcohol concentration  
33 of the person's breath or blood is 0.10 or more, in the case of a  
34 person age twenty-one or over, or 0.02 or more in the case of a person  
35 under age twenty-one; and

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

38 (3) Except as provided in this section, the test administered shall  
39 be of the breath only. If an individual is unconscious or is under

1 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
2 or vehicular assault as provided in RCW 46.61.522, or if an individual  
3 is under arrest for the crime of driving while under the influence of  
4 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest  
5 results from an accident in which there has been serious bodily injury  
6 to another person, a breath or blood test may be administered without  
7 the consent of the individual so arrested.

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

14 (5) If, following his or her arrest or a fatal accident and receipt  
15 of warnings under subsection (2) of this section, the person  
16 (~~arrested~~) refuses upon the request of a law enforcement officer to  
17 submit to a test or tests of his or her breath or blood, no test shall  
18 be given except as authorized under subsection (3) or (4) of this  
19 section.

20 (6) If, after arrest or a fatal accident and after the other  
21 applicable conditions and requirements of this section have been  
22 satisfied, a test or tests of the person's blood or breath is  
23 administered and the test results indicate that the alcohol  
24 concentration of the person's breath or blood is 0.10 or more if the  
25 person is age twenty-one or over, or is 0.02 or more if the person is  
26 under the age of twenty-one, or the person refuses to submit to a test,  
27 the arresting officer or other law enforcement officer at whose  
28 direction any test has been given, or the department, where applicable,  
29 if the arrest or fatal accident results in a test of the person's  
30 blood, shall:

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

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

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

3 (d) Serve notice in writing that the marked license or permit, if  
4 any, is a temporary license that is valid for sixty days from the date  
5 of arrest or fatal accident or from the date notice has been given in  
6 the event notice is given by the department following a blood test, or  
7 until the suspension, revocation, or denial of the person's license,  
8 permit, or privilege to drive is sustained at a hearing pursuant to  
9 subsection (8) of this section, whichever occurs first. No temporary  
10 license is valid to any greater degree than the license or permit that  
11 it replaces; and

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

16 (i) That the officer had reasonable grounds to believe the  
17 (~~arrested~~) person had been driving or was in actual physical control  
18 of a motor vehicle within this state while under the influence of  
19 intoxicating liquor or drugs, or both, had been driving or was in  
20 actual physical control of a motor vehicle involved in a fatal accident  
21 while having alcohol or any drug in his or her system, or was under the  
22 age of twenty-one years and had been driving or was in actual physical  
23 control of a motor vehicle while having an alcohol concentration of  
24 0.02 or more;

25 (ii) That after receipt of the warnings required by subsection (2)  
26 of this section the person refused to submit to a test of his or her  
27 blood or breath, or a test was administered and the results indicated  
28 that the alcohol concentration of the person's breath or blood was 0.10  
29 or more if the person is age twenty-one or over, or was 0.02 or more if  
30 the person is under the age of twenty-one; and

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

32 (7) The department of licensing, upon the receipt of a sworn report  
33 or report under a declaration authorized by RCW 9A.72.085 under  
34 subsection (6)(e) of this section, shall suspend, revoke, deny, or  
35 place in probationary status the person's license, permit, or privilege  
36 to drive or any nonresident operating privilege, as provided in RCW  
37 46.20.3101, such suspension, revocation, denial, or placement in  
38 probationary status to be effective beginning sixty days from the date  
39 of arrest or fatal accident or from the date notice has been given in

1 the event notice is given by the department following a blood test, or  
2 when sustained at a hearing pursuant to subsection (8) of this section,  
3 whichever occurs first.

4 (8) A person receiving notification under subsection (6)(b) of this  
5 section may, within thirty days after the notice has been given,  
6 request in writing a formal hearing before the department. The person  
7 shall pay a fee of one hundred dollars as part of the request. If the  
8 request is mailed, it must be postmarked within thirty days after  
9 receipt of the notification. Upon timely receipt of such a request for  
10 a formal hearing, including receipt of the required one hundred dollar  
11 fee, the department shall afford the person an opportunity for a  
12 hearing. Except as otherwise provided in this section, the hearing is  
13 subject to and shall be scheduled and conducted in accordance with RCW  
14 46.20.329 and 46.20.332. The hearing shall be conducted in the county  
15 of the arrest or fatal accident, except that all or part of the hearing  
16 may, at the discretion of the department, be conducted by telephone or  
17 other electronic means. The hearing shall be held within sixty days  
18 following the arrest or fatal accident or following the date notice has  
19 been given in the event notice is given by the department following a  
20 blood test, unless otherwise agreed to by the department and the  
21 person, in which case the action by the department shall be stayed, and  
22 any valid temporary license marked under subsection (6)(c) of this  
23 section extended, if the person is otherwise eligible for licensing.  
24 For the purposes of this section, the scope of the hearing shall cover  
25 the issues of whether a law enforcement officer had reasonable grounds  
26 to believe the person had been driving or was in actual physical  
27 control of a motor vehicle within this state while under the influence  
28 of intoxicating liquor or any drug, had been driving or was in actual  
29 physical control of a motor vehicle involved in a fatal accident while  
30 having alcohol or any drug in his or her system, or had been driving or  
31 was in actual physical control of a motor vehicle within this state  
32 while having alcohol in his or her system in a concentration of 0.02 or  
33 more and was under the age of twenty-one, whether the person was placed  
34 under arrest, and (a) whether the person refused to submit to the test  
35 or tests upon request of the officer after having been informed that  
36 such refusal would result in the revocation of the person's license,  
37 permit, or privilege to drive, or (b) if a test or tests were  
38 administered, whether the applicable requirements of this section were  
39 satisfied before the administration of the test or tests, whether the

1 person submitted to the test or tests, or whether a test was  
2 administered without express consent as permitted under this section,  
3 and whether the test or tests indicated that the alcohol concentration  
4 of the person's breath or blood was 0.10 or more if the person was age  
5 twenty-one or over at the time of the arrest or fatal accident, or was  
6 0.02 or more if the person was under the age of twenty-one at the time  
7 of the arrest or fatal accident. The sworn report or report under a  
8 declaration authorized by RCW 9A.72.085 submitted by a law enforcement  
9 officer is prima facie evidence that the officer had reasonable grounds  
10 to believe the person had been driving or was in actual physical  
11 control of a motor vehicle within this state while under the influence  
12 of intoxicating liquor or drugs, or both, had been driving or was in  
13 actual physical control of a motor vehicle involved in a fatal accident  
14 while having alcohol or any drug in his or her system, or the person  
15 had been driving or was in actual physical control of a motor vehicle  
16 within this state while having alcohol in his or her system in a  
17 concentration of 0.02 or more and was under the age of twenty-one and  
18 that the officer complied with the requirements of this section.

19 A hearing officer shall conduct the hearing, may issue subpoenas  
20 for the attendance of witnesses and the production of documents, and  
21 shall administer oaths to witnesses. The hearing officer shall not  
22 issue a subpoena for the attendance of a witness at the request of the  
23 person unless the request is accompanied by the fee required by RCW  
24 5.56.010 for a witness in district court. The sworn report or report  
25 under a declaration authorized by RCW 9A.72.085 of the law enforcement  
26 officer and any other evidence accompanying the report shall be  
27 admissible without further evidentiary foundation and the  
28 certifications authorized by the criminal rules for courts of limited  
29 jurisdiction shall be admissible without further evidentiary  
30 foundation. The person may be represented by counsel, may question  
31 witnesses, may present evidence, and may testify. The department shall  
32 order that the suspension, revocation, denial, or placement in  
33 probationary status either be rescinded or sustained.

34 (9) If the suspension, revocation, denial, or placement in  
35 probationary status is sustained after such a hearing, the person whose  
36 license, privilege, or permit is suspended, revoked, denied, or placed  
37 in probationary status has the right to file a petition in the superior  
38 court of the county of arrest or fatal accident to review the final  
39 order of revocation by the department in the same manner as an appeal

1 from a decision of a court of limited jurisdiction. The appellant must  
2 pay the costs associated with obtaining the record of the hearing  
3 before the hearing officer. The filing of the appeal does not stay the  
4 effective date of the suspension, revocation, denial, or placement in  
5 probationary status. A petition filed under this subsection must  
6 include the petitioner's grounds for requesting review. Upon granting  
7 petitioner's request for review, the court shall review the  
8 department's final order of suspension, revocation, denial, or  
9 placement in probationary status as expeditiously as possible. If  
10 judicial relief is sought for a stay or other temporary remedy from the  
11 department's action, the court shall not grant such relief unless the  
12 court finds that the appellant is likely to prevail in the appeal and  
13 that without a stay the appellant will suffer irreparable injury. If  
14 the court stays the suspension, revocation, denial, or placement in  
15 probationary status it may impose conditions on such stay.

16 (10) If a person whose driver's license, permit, or privilege to  
17 drive has been or will be suspended, revoked, denied, or placed in  
18 probationary status under subsection (7) of this section, other than as  
19 a result of a breath test refusal, and who has not committed an offense  
20 within the last five years for which he or she was granted a deferred  
21 prosecution under chapter 10.05 RCW, petitions a court for a deferred  
22 prosecution on criminal charges arising out of the arrest or fatal  
23 accident for which action has been or will be taken under subsection  
24 (7) of this section, the court may direct the department to stay any  
25 actual or proposed suspension, revocation, denial, or placement in  
26 probationary status for at least forty-five days but not more than  
27 ninety days. If the court stays the suspension, revocation, denial, or  
28 placement in probationary status, it may impose conditions on such  
29 stay. If the person is otherwise eligible for licensing, the  
30 department shall issue a temporary license, or extend any valid  
31 temporary license marked under subsection (6) of this section, for the  
32 period of the stay. If a deferred prosecution treatment plan is not  
33 recommended in the report made under RCW 10.05.050, or if treatment is  
34 rejected by the court, or if the person declines to accept an offered  
35 treatment plan, or if the person violates any condition imposed by the  
36 court, then the court shall immediately direct the department to cancel  
37 the stay and any temporary marked license or extension of a temporary  
38 license issued under this subsection.

1 A suspension, revocation, or denial imposed under this section,  
2 other than as a result of a breath test refusal, shall be stayed if the  
3 person is accepted for deferred prosecution as provided in chapter  
4 10.05 RCW for the incident upon which the suspension, revocation, or  
5 denial is based. If the deferred prosecution is terminated, the stay  
6 shall be lifted and the suspension, revocation, or denial reinstated.  
7 If the deferred prosecution is completed, the stay shall be lifted and  
8 the suspension, revocation, or denial canceled.

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

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