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HOUSE BILL 2518

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State of Washington                      55th Legislature                      1998 Regular Session

By Representatives McDonald, Sheahan, Sterk and Delvin

Read first time . Referred to Committee on .

1            AN ACT Relating to testing for drugs or alcohol in suspected cases  
2 of driving while under the influence; and amending RCW 46.20.308,  
3 46.61.506, and 46.61.508.

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

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

7            (1) Any person who operates a motor vehicle within this state is  
8 deemed to have given consent, subject to the provisions of RCW  
9 46.61.506, to a test or tests of his or her breath ~~((or))~~, blood, or  
10 urine for the purpose of determining the alcohol concentration or  
11 presence of any drug in his or her breath ~~((or))~~, blood, or urine if  
12 arrested for any offense where, at the time of the arrest, the  
13 arresting officer has reasonable grounds to believe the person had been  
14 driving or was in actual physical control of a motor vehicle while  
15 under the influence of intoxicating liquor or any drug or was in  
16 violation of RCW 46.61.503.

17            (2) The test or tests of breath shall be administered at the  
18 direction of a law enforcement officer having reasonable grounds to  
19 believe the person to have been driving or in actual physical control

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

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

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

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

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

37 (4) Any person who is dead, unconscious, or who is otherwise in a  
38 condition rendering him or her incapable of refusal, shall be deemed  
39 not to have withdrawn the consent provided by subsection (1) of this

1 section and the test or tests may be administered, subject to the  
2 provisions of RCW 46.61.506, and the person shall be deemed to have  
3 received the warnings required under subsection (2) of this section.

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

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

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

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

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

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

37 (e) Immediately notify the department of the arrest and transmit to  
38 the department within seventy-two hours, except as delayed as the

1 result of a blood test, a sworn report or report under a declaration  
2 authorized by RCW 9A.72.085 that states:

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

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

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

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

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

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

37 A hearing officer shall conduct the hearing, may issue subpoenas  
38 for the attendance of witnesses and the production of documents, and  
39 shall administer oaths to witnesses. The hearing officer shall not

1 issue a subpoena for the attendance of a witness at the request of the  
2 person unless the request is accompanied by the fee required by RCW  
3 5.56.010 for a witness in district court. The sworn report or report  
4 under a declaration authorized by RCW 9A.72.085 of the law enforcement  
5 officer and any other evidence accompanying the report shall be  
6 admissible without further evidentiary foundation and the  
7 certifications authorized by the criminal rules for courts of limited  
8 jurisdiction shall be admissible without further evidentiary  
9 foundation. The person may be represented by counsel, may question  
10 witnesses, may present evidence, and may testify. The department shall  
11 order that the suspension, revocation, denial, or placement in  
12 probationary status either be rescinded or sustained.

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

34 (10) If a person whose driver's license, permit, or privilege to  
35 drive has been or will be suspended, revoked, denied, or placed in  
36 probationary status under subsection (7) of this section, other than as  
37 a result of a ((breath)) test refusal, and who has not committed an  
38 offense within the last five years for which he or she was granted a  
39 deferred prosecution under chapter 10.05 RCW, petitions a court for a

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

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

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

32 **Sec. 2.** RCW 46.61.506 and 1995 c 332 s 18 are each amended to read  
33 as follows:

34 (1) Upon the trial of any civil or criminal action or proceeding  
35 arising out of acts alleged to have been committed by any person while  
36 driving or in actual physical control of a vehicle while under the  
37 influence of intoxicating liquor or any drug, if analysis of the  
38 person's breath or blood has shown an alcohol concentration ((is)) of

1 less than 0.10, ~~((it))~~ or if analysis of the person's urine has shown  
2 a quantitative and qualitative amount of any drug, such analysis is  
3 evidence that may be considered with other competent evidence in  
4 determining whether the person was under the influence of intoxicating  
5 liquor or any drug.

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

11 (3) Analysis of the person's blood ~~((or))~~, breath, or urine to be  
12 considered valid under the provisions of this section or RCW 46.61.502  
13 or 46.61.504 shall have been performed according to methods approved by  
14 the state toxicologist and by an individual possessing a valid permit  
15 issued by the state toxicologist for this purpose. The state  
16 toxicologist is directed to approve satisfactory techniques or methods,  
17 to supervise the examination of individuals to ascertain their  
18 qualifications and competence to conduct such analyses, and to issue  
19 permits which shall be subject to termination or revocation at the  
20 discretion of the state toxicologist.

21 (4) When a blood test is administered under the provisions of RCW  
22 46.20.308, the withdrawal of blood for the purpose of determining its  
23 alcoholic or drug content may be performed only by a physician, a  
24 registered nurse, or a qualified technician. ~~((This))~~ When a urine  
25 sample is obtained under the provisions of RCW 46.20.308, obtaining the  
26 urine sample for the purpose of determining its alcoholic or drug  
27 content may be performed only under the direction or supervision of a  
28 physician, a registered nurse, or a qualified technician. These  
29 limitations ~~((shall))~~ on blood and urine tests do not apply to the  
30 taking of breath specimens.

31 (5) The person tested may have a physician, or a qualified  
32 technician, chemist, registered nurse, or other qualified person of his  
33 or her own choosing administer one or more tests in addition to any  
34 administered at the direction of a law enforcement officer. The  
35 failure or inability to obtain an additional test by a person shall not  
36 preclude the admission of evidence relating to the test or tests taken  
37 at the direction of a law enforcement officer.

38 (6) Upon the request of the person who shall submit to a test or  
39 tests at the request of a law enforcement officer, full information

1 concerning the test or tests shall be made available to him or her or  
2 his or her attorney.

3 **Sec. 3.** RCW 46.61.508 and 1977 ex.s. c 143 s 1 are each amended to  
4 read as follows:

5 No physician, registered nurse, qualified technician, or hospital,  
6 or duly licensed clinical laboratory employing or utilizing services of  
7 such physician, registered nurse, or qualified technician, shall incur  
8 any civil or criminal liability as a result of the act of withdrawing  
9 blood or from directing or supervising the obtaining of a urine sample  
10 from any person when directed by a law enforcement officer to do so for  
11 the purpose of a blood or urine test under the provisions of RCW  
12 46.20.308(~~(, as now or hereafter amended)~~): PROVIDED, That nothing in  
13 this section shall relieve any physician, registered nurse, qualified  
14 technician, or hospital or duly licensed clinical laboratory from civil  
15 liability arising from the use of improper procedures or failing to  
16 exercise the required standard of care.

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