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**SUBSTITUTE SENATE BILL 5819**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators Finkbeiner and Kline)

READ FIRST TIME 03/05/03.

1       AN ACT Relating to operation of a vehicle, street car, rail fixed  
2       guideway system, vessel, aircraft, or other conveyance involved in an  
3       accident; and reenacting and amending RCW 46.20.308.

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

5       **Sec. 1.** RCW 46.20.308 and 1999 c 331 s 2 and 1999 c 274 s 2 are  
6       each reenacted and amended to read 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 for the  
10      purpose of determining the alcohol concentration or presence of any  
11      drug in his or her breath or blood if arrested for any offense where,  
12      at the time of the arrest, the arresting officer has reasonable grounds  
13      to believe the person had been driving or was in actual physical  
14      control of a motor vehicle while under the influence of intoxicating  
15      liquor or any drug or was in violation of RCW 46.61.503.

16      (2) The test or tests of breath shall be administered at the  
17      direction of a law enforcement officer having reasonable grounds to  
18      believe the person to have been driving or in actual physical control  
19      of a motor vehicle within this state while under the influence of

1 intoxicating liquor or any drug or the person to have been driving or  
2 in actual physical control of a motor vehicle while having alcohol in  
3 a concentration in violation of RCW 46.61.503 in his or her system and  
4 being under the age of twenty-one. However, in those instances where  
5 the person is incapable due to physical injury, physical incapacity, or  
6 other physical limitation, of providing a breath sample or where the  
7 person is being treated in a hospital, clinic, doctor's office,  
8 emergency medical vehicle, ambulance, or other similar facility in  
9 which a breath testing instrument is not present or where the officer  
10 has reasonable grounds to believe that the person is under the  
11 influence of a drug, a blood test shall be administered by a qualified  
12 person as provided in RCW 46.61.506(4). The officer shall inform the  
13 person of his or her right to refuse the breath or blood test, and of  
14 his or her right to have additional tests administered by any qualified  
15 person of his or her choosing as provided in RCW 46.61.506. The  
16 officer shall warn the driver that:

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

19 (b) His or her license, permit, or privilege to drive will be  
20 suspended, revoked, or denied if the test is administered and the test  
21 indicates the alcohol concentration of the person's breath or blood is  
22 0.08 or more, in the case of a person age twenty-one or over, or in  
23 violation of RCW 46.61.502, 46.61.503, or 46.61.504 in the case of a  
24 person under age twenty-one; and

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

27 (3) Except as provided in this section, the test administered shall  
28 be of the breath only. If an individual is unconscious or is under  
29 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
30 or vehicular assault as provided in RCW 46.61.522, or if an individual  
31 is under arrest for the crime of driving while under the influence of  
32 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest  
33 results from an accident in which there has been serious bodily injury  
34 to another person, a breath or blood test may be administered without  
35 the consent of the individual so arrested. This subsection applies to  
36 operation of a vehicle as defined in RCW 46.04.670, street car as  
37 defined in RCW 46.04.570, rail fixed guideway system as defined in RCW

1 81.104.015, vessel as defined in RCW 88.02.010, aircraft as defined in  
2 RCW 14.16.010, or other conveyances not governed by the national  
3 transportation safety board, within this state.

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

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

15 (6) If, after arrest and after the other applicable conditions and  
16 requirements of this section have been satisfied, a test or tests of  
17 the person's blood or breath is administered and the test results  
18 indicate that the alcohol concentration of the person's breath or blood  
19 is 0.08 or more if the person is age twenty-one or over, or is in  
20 violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is  
21 under the age of twenty-one, or the person refuses to submit to a test,  
22 the arresting officer or other law enforcement officer at whose  
23 direction any test has been given, or the department, where applicable,  
24 if the arrest results in a test of the person's blood, shall:

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

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

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

35 (d) Serve notice in writing that the marked license or permit, if  
36 any, is a temporary license that is valid for sixty days from the date  
37 of arrest or from the date notice has been given in the event notice is  
38 given by the department following a blood test, or until the

1 suspension, revocation, or denial of the person's license, permit, or  
2 privilege to drive is sustained at a hearing pursuant to subsection (8)  
3 of this section, whichever occurs first. No temporary license is valid  
4 to any greater degree than the license or permit that it replaces; and

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

9 (i) That the officer had reasonable grounds to believe the arrested  
10 person had been driving or was in actual physical control of a motor  
11 vehicle within this state while under the influence of intoxicating  
12 liquor or drugs, or both, or was under the age of twenty-one years and  
13 had been driving or was in actual physical control of a motor vehicle  
14 while having an alcohol concentration in violation of RCW 46.61.503;

15 (ii) That after receipt of the warnings required by subsection (2)  
16 of this section the person refused to submit to a test of his or her  
17 blood or breath, or a test was administered and the results indicated  
18 that the alcohol concentration of the person's breath or blood was 0.08  
19 or more if the person is age twenty-one or over, or was in violation of  
20 RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age  
21 of twenty-one; and

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

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

33 (8) A person receiving notification under subsection (6)(b) of this  
34 section may, within thirty days after the notice has been given,  
35 request in writing a formal hearing before the department. The person  
36 shall pay a fee of one hundred dollars as part of the request. If the  
37 request is mailed, it must be postmarked within thirty days after  
38 receipt of the notification. Upon timely receipt of such a request for

1 a formal hearing, including receipt of the required one hundred dollar  
2 fee, the department shall afford the person an opportunity for a  
3 hearing. The department may waive the required one hundred dollar fee  
4 if the person is an indigent as defined in RCW 10.101.010. Except as  
5 otherwise provided in this section, the hearing is subject to and shall  
6 be scheduled and conducted in accordance with RCW 46.20.329 and  
7 46.20.332. The hearing shall be conducted in the county of the arrest,  
8 except that all or part of the hearing may, at the discretion of the  
9 department, be conducted by telephone or other electronic means. The  
10 hearing shall be held within sixty days following the arrest or  
11 following the date notice has been given in the event notice is given  
12 by the department following a blood test, unless otherwise agreed to by  
13 the department and the person, in which case the action by the  
14 department shall be stayed, and any valid temporary license marked  
15 under subsection (6)(c) of this section extended, if the person is  
16 otherwise eligible for licensing. For the purposes of this section,  
17 the scope of the hearing shall cover the issues of whether a law  
18 enforcement officer had reasonable grounds to believe the person had  
19 been driving or was in actual physical control of a motor vehicle  
20 within this state while under the influence of intoxicating liquor or  
21 any drug or had been driving or was in actual physical control of a  
22 motor vehicle within this state while having alcohol in his or her  
23 system in a concentration in violation of RCW 46.61.503 and was under  
24 the age of twenty-one, whether the person was placed under arrest, and  
25 (a) whether the person refused to submit to the test or tests upon  
26 request of the officer after having been informed that such refusal  
27 would result in the revocation of the person's license, permit, or  
28 privilege to drive, or (b) if a test or tests were administered,  
29 whether the applicable requirements of this section were satisfied  
30 before the administration of the test or tests, whether the person  
31 submitted to the test or tests, or whether a test was administered  
32 without express consent as permitted under this section, and whether  
33 the test or tests indicated that the alcohol concentration of the  
34 person's breath or blood was 0.08 or more if the person was age twenty-  
35 one or over at the time of the arrest, or was in violation of RCW  
36 46.61.502, 46.61.503, or 46.61.504 if the person was under the age of  
37 twenty-one at the time of the arrest. The sworn report or report under  
38 a declaration authorized by RCW 9A.72.085 submitted by a law

1 enforcement officer is prima facie evidence that the officer had  
2 reasonable grounds to believe the person had been driving or was in  
3 actual physical control of a motor vehicle within this state while  
4 under the influence of intoxicating liquor or drugs, or both, or the  
5 person had been driving or was in actual physical control of a motor  
6 vehicle within this state while having alcohol in his or her system in  
7 a concentration in violation of RCW 46.61.503 and was under the age of  
8 twenty-one and that the officer complied with the requirements of this  
9 section.

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

25 (9) If the suspension, revocation, or denial is sustained after  
26 such a hearing, the person whose license, privilege, or permit is  
27 suspended, revoked, or denied has the right to file a petition in the  
28 superior court of the county of arrest to review the final order of  
29 revocation by the department in the same manner as an appeal from a  
30 decision of a court of limited jurisdiction. Notice of appeal must be  
31 filed within thirty days after the date the final order is served or  
32 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ  
33 1.1, or other statutes or rules referencing de novo review, the appeal  
34 shall be limited to a review of the record of the administrative  
35 hearing. The appellant must pay the costs associated with obtaining  
36 the record of the hearing before the hearing officer. The filing of  
37 the appeal does not stay the effective date of the suspension,  
38 revocation, or denial. A petition filed under this subsection must

1 include the petitioner's grounds for requesting review. Upon granting  
2 petitioner's request for review, the court shall review the  
3 department's final order of suspension, revocation, or denial as  
4 expeditiously as possible. The review must be limited to a  
5 determination of whether the department has committed any errors of  
6 law. The superior court shall accept those factual determinations  
7 supported by substantial evidence in the record: (a) That were  
8 expressly made by the department; or (b) that may reasonably be  
9 inferred from the final order of the department. The superior court  
10 may reverse, affirm, or modify the decision of the department or remand  
11 the case back to the department for further proceedings. The decision  
12 of the superior court must be in writing and filed in the clerk's  
13 office with the other papers in the case. The court shall state the  
14 reasons for the decision. If judicial relief is sought for a stay or  
15 other temporary remedy from the department's action, the court shall  
16 not grant such relief unless the court finds that the appellant is  
17 likely to prevail in the appeal and that without a stay the appellant  
18 will suffer irreparable injury. If the court stays the suspension,  
19 revocation, or denial it may impose conditions on such stay.

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

1 direct the department to cancel the stay and any temporary marked  
2 license or extension of a temporary license issued under this  
3 subsection.

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

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

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