

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5644**

59th Legislature  
2005 Regular Session

Passed by the Senate March 16, 2005  
YEAS 48 NAYS 0

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**President of the Senate**

Passed by the House April 11, 2005  
YEAS 96 NAYS 0

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5644** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5644**

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Passed Legislature - 2005 Regular Session

**State of Washington                      59th Legislature                      2005 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators Kline, Roach, Benton, Esser, Prentice, Shin, McAuliffe, Haugen, Fairley, Hargrove and Rasmussen)

READ FIRST TIME 02/28/05.

1            AN ACT Relating to driver's license suspensions; and reenacting and  
2 amending RCW 46.20.308.

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

4            **Sec. 1.** RCW 46.20.308 and 2004 c 187 s 1 and 2004 c 95 s 2 are  
5 each reenacted and amended to read as follows:

6            (1) 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. Neither  
15 consent nor this section precludes a police officer from obtaining a  
16 search warrant for a person's breath or blood.

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 any drug or the person to have been driving or  
3 in actual physical control of a motor vehicle while having alcohol in  
4 a concentration in violation of RCW 46.61.503 in his or her system and  
5 being under the age of twenty-one. However, in those instances where  
6 the person is incapable due to physical injury, physical incapacity, or  
7 other physical limitation, of providing a breath sample or where the  
8 person is being treated in a hospital, clinic, doctor's office,  
9 emergency medical vehicle, ambulance, or other similar facility or  
10 where the officer has reasonable grounds to believe that the person is  
11 under the influence of a drug, a blood test shall be administered by a  
12 qualified person as provided in RCW 46.61.506(5). The officer shall  
13 inform the person of his or her right to refuse the breath or blood  
14 test, and of his or her right to have additional tests administered by  
15 any qualified person of his or her choosing as provided in RCW  
16 46.61.506. The officer shall warn the driver, in substantially the  
17 following language, that:

18 (a) If the driver refuses to take the test, the driver's license,  
19 permit, or privilege to drive will be revoked or denied for at least  
20 one year; and

21 (b) If the driver refuses to take the test, the driver's refusal to  
22 take the test may be used in a criminal trial; and

23 (c) If the driver submits to the test and the test is administered,  
24 the driver's license, permit, or privilege to drive will be suspended,  
25 revoked, or denied for at least ninety days if the driver is age  
26 twenty-one or over and the test indicates the alcohol concentration of  
27 the driver's breath or blood is 0.08 or more, or if the driver is under  
28 age twenty-one and the test indicates the alcohol concentration of the  
29 driver's breath or blood is 0.02 or more, or if the driver is under age  
30 twenty-one and the driver is in violation of RCW 46.61.502 or  
31 46.61.504.

32 (3) Except as provided in this section, the test administered shall  
33 be of the breath only. If an individual is unconscious or is under  
34 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
35 or vehicular assault as provided in RCW 46.61.522, or if an individual  
36 is under arrest for the crime of driving while under the influence of  
37 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest

1 results from an accident in which there has been serious bodily injury  
2 to another person, a breath or blood test may be administered without  
3 the consent of the individual so arrested.

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 0.02 or  
20 more if the person is under the age of twenty-one, or the person  
21 refuses to submit to a test, the arresting officer or other law  
22 enforcement officer at whose direction any test has been given, or the  
23 department, where applicable, if the arrest results in a test of the  
24 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 0.02 or more if  
20 the person is under the age of twenty-one; and

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

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

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

1 fee, the department shall afford the person an opportunity for a  
2 hearing. The department may waive the required one hundred dollar fee  
3 if the person is an indigent as defined in RCW 10.101.010. Except as  
4 otherwise provided in this section, the hearing is subject to and shall  
5 be scheduled and conducted in accordance with RCW 46.20.329 and  
6 46.20.332. The hearing shall be conducted in the county of the arrest,  
7 except that all or part of the hearing may, at the discretion of the  
8 department, be conducted by telephone or other electronic means. The  
9 hearing shall be held within sixty days following the arrest or  
10 following the date notice has been given in the event notice is given  
11 by the department following a blood test, unless otherwise agreed to by  
12 the department and the person, in which case the action by the  
13 department shall be stayed, and any valid temporary license marked  
14 under subsection (6)(c) of this section extended, if the person is  
15 otherwise eligible for licensing. For the purposes of this section,  
16 the scope of the hearing shall cover the issues of whether a law  
17 enforcement officer had reasonable grounds to believe the person had  
18 been driving or was in actual physical control of a motor vehicle  
19 within this state while under the influence of intoxicating liquor or  
20 any drug or had been driving or was in actual physical control of a  
21 motor vehicle within this state while having alcohol in his or her  
22 system in a concentration of 0.02 or more if the person was under the  
23 age of twenty-one, whether the person was placed under arrest, and (a)  
24 whether the person refused to submit to the test or tests upon request  
25 of the officer after having been informed that such refusal would  
26 result in the revocation of the person's license, permit, or privilege  
27 to drive, or (b) if a test or tests were administered, whether the  
28 applicable requirements of this section were satisfied before the  
29 administration of the test or tests, whether the person submitted to  
30 the test or tests, or whether a test was administered without express  
31 consent as permitted under this section, and whether the test or tests  
32 indicated that the alcohol concentration of the person's breath or  
33 blood was 0.08 or more if the person was age twenty-one or over at the  
34 time of the arrest, or 0.02 or more if the person was under the age of  
35 twenty-one at the time of the arrest. The sworn report or report under  
36 a declaration authorized by RCW 9A.72.085 submitted by a law  
37 enforcement officer is prima facie evidence that the officer had  
38 reasonable grounds to believe the person had been driving or was in

1 actual physical control of a motor vehicle within this state while  
2 under the influence of intoxicating liquor or drugs, or both, or the  
3 person had been driving or was in actual physical control of a motor  
4 vehicle within this state while having alcohol in his or her system in  
5 a concentration of 0.02 or more and was under the age of twenty-one and  
6 that the officer complied with the requirements of this section.

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

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

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

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

1 declines to accept an offered treatment plan, or if the person violates  
2 any condition imposed by the court, then the court shall immediately  
3 direct the department to cancel the stay and any temporary marked  
4 license or extension of a temporary license issued under this  
5 subsection.

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

14 (c) The provisions of (b) of this subsection relating to a stay of  
15 a suspension, revocation, or denial and the cancellation of any  
16 suspension, revocation, or denial do not apply to the suspension,  
17 revocation, denial, or disqualification of a person's commercial  
18 driver's license or privilege to operate a commercial motor vehicle.

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

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