
SENATE BILL 6233

State of Washington

61st Legislature

2010 Regular Session

By Senators Kline, Parlette, Carrell, Zarelli, Tom, and Hewitt; by request of Washington State Patrol

Read first time 01/11/10. Referred to Committee on Judiciary.

1 AN ACT Relating to breath test instruments approved by the state
2 toxicologist; and amending RCW 46.61.506.

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

4 **Sec. 1.** RCW 46.61.506 and 2004 c 68 s 4 are each amended to read
5 as follows:

6 (1) Upon the trial of any civil or criminal action or proceeding
7 arising out of acts alleged to have been committed by any person while
8 driving or in actual physical control of a vehicle while under the
9 influence of intoxicating liquor or any drug, if the person's alcohol
10 concentration is less than 0.08, it is evidence that may be considered
11 with other competent evidence in determining whether the person was
12 under the influence of intoxicating liquor or any drug.

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

18 (3) Analysis of the person's blood or breath to be considered valid
19 under the provisions of this section or RCW 46.61.502 or 46.61.504

1 shall have been performed according to methods approved by the state
2 toxicologist and by an individual possessing a valid permit issued by
3 the state toxicologist for this purpose. The state toxicologist is
4 directed to approve satisfactory techniques or methods, to supervise
5 the examination of individuals to ascertain their qualifications and
6 competence to conduct such analyses, and to issue permits which shall
7 be subject to termination or revocation at the discretion of the state
8 toxicologist.

9 (4)(a) A breath test performed by any instrument approved by the
10 state toxicologist shall be admissible at trial or in an administrative
11 proceeding if the prosecution or department produces prima facie
12 evidence of the following:

13 (i) The person who performed the test was authorized to perform
14 such test by the state toxicologist;

15 (ii) The person being tested did not vomit or have anything to eat,
16 drink, or smoke for at least fifteen minutes prior to administration of
17 the test;

18 (iii) The person being tested did not have any foreign substances,
19 not to include dental work, fixed or removable, in his or her mouth at
20 the beginning of the fifteen-minute observation period;

21 (iv) Prior to the start of the test, the temperature of ~~((the))~~ any
22 liquid simulator solution utilized as an external standard, as measured
23 by a thermometer approved of by the state toxicologist was thirty-four
24 degrees centigrade plus or minus 0.3 degrees centigrade;

25 (v) The internal standard test resulted in the message "verified";

26 (vi) The two breath samples agree to within plus or minus ten
27 percent of their mean to be determined by the method approved by the
28 state toxicologist;

29 (vii) The result of the test of the liquid simulator solution
30 external standard or dry gas external standard result did lie between
31 .072 to .088 inclusive; and

32 (viii) All blank tests gave results of .000.

33 (b) For purposes of this section, "prima facie evidence" is
34 evidence of sufficient circumstances that would support a logical and
35 reasonable inference of the facts sought to be proved. In assessing
36 whether there is sufficient evidence of the foundational facts, the
37 court or administrative tribunal is to assume the truth of the

1 prosecution's or department's evidence and all reasonable inferences
2 from it in a light most favorable to the prosecution or department.

3 (c) Nothing in this section shall be deemed to prevent the subject
4 of the test from challenging the reliability or accuracy of the test,
5 the reliability or functioning of the instrument, or any maintenance
6 procedures. Such challenges, however, shall not preclude the
7 admissibility of the test once the prosecution or department has made
8 a prima facie showing of the requirements contained in (a) of this
9 subsection. Instead, such challenges may be considered by the trier of
10 fact in determining what weight to give to the test result.

11 (5) 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, a licensed practical nurse, a nursing assistant as
15 defined in chapter 18.88A RCW, a physician assistant as defined in
16 chapter 18.71A RCW, a first responder as defined in chapter 18.73 RCW,
17 an emergency medical technician as defined in chapter 18.73 RCW, a
18 health care assistant as defined in chapter 18.135 RCW, or any
19 technician trained in withdrawing blood. This limitation shall not
20 apply to the taking of breath specimens.

21 (6) The person tested may have a physician, or a qualified
22 technician, chemist, registered nurse, or other qualified person of his
23 or her own choosing administer one or more tests in addition to any
24 administered at the direction of a law enforcement officer. The test
25 will be admissible if the person establishes the general acceptability
26 of the testing technique or method. The failure or inability to obtain
27 an additional test by a person shall not preclude the admission of
28 evidence relating to the test or tests taken at the direction of a law
29 enforcement officer.

30 (7) Upon the request of the person who shall submit to a test or
31 tests at the request of a law enforcement officer, full information
32 concerning the test or tests shall be made available to him or her or
33 his or her attorney.

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