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**SUBSTITUTE SENATE BILL 5066**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Padden and Darneille)

AN ACT Relating to the collection of blood samples for forensic testing; amending RCW 46.61.506 and 46.61.508; adding a new section to chapter 18.130 RCW; adding a new section to chapter 43.70 RCW; and adding a new section to chapter 46.04 RCW.

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

NEW SECTION. **Sec.**  A new section is added to chapter 18.130 RCW to read as follows:

It is not professional misconduct for a physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood, to collect a blood sample without a person's consent when the physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood was directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant or exigent circumstances: PROVIDED, That nothing in this section shall relieve a physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, a forensic phlebotomist under section 3 of this act, or any technician trained in withdrawing blood from professional discipline arising from the use of improper procedures or from failing to exercise the required standard of care.

NEW SECTION. **Sec.**  A new section is added to chapter 43.70 RCW to read as follows:

(1) The secretary, in consultation with health profession boards and commissions, the Washington state criminal justice training commission, and the Washington state patrol, shall establish by rule the administrative procedures and administrative requirements for initial issue, renewal, and reissue of a credential for forensic phlebotomists as defined in section 3 of this act. Failure to renew invalidates the credential and all privileges granted by the credential. Administrative procedures and administrative requirements do not include establishing, monitoring, and enforcing qualifications for licensure, scope or standards of practice, continuing competency mechanisms, and discipline when such authority is authorized in statute to a health profession board or commission or to the criminal justice training commission. For the purposes of this section, "in consultation with" means providing an opportunity for meaningful participation in development of rules consistent with processes set forth in RCW 34.05.310.

(2) Notwithstanding any provision of law to the contrary that provides for a licensing period for any type of license subject to this chapter including those under RCW 18.130.040, the secretary may, from time to time, extend or otherwise modify the duration of any licensing, certification, or registration period, whether an initial or renewal period, if the secretary determines that it would result in a more economical or efficient operation of state government and that the public health, safety, or welfare would not be substantially adversely affected thereby. However, no license, certification, or registration may be issued or approved for a period in excess of four years, without renewal. Such extension, reduction, or other modification of a licensing, certification, or registration period shall be by rule or regulation of the department adopted in accordance with the provisions of chapter 34.05 RCW. Such rules and regulations may provide a method for imposing and collecting such additional proportional fee as may be required for the extended or modified period.

NEW SECTION. **Sec.**  A new section is added to chapter 46.04 RCW to read as follows:

"Forensic phlebotomist" means a police officer, law enforcement officer, or employee of a correctional facility or detention facility, who completed a venipuncture training program required under section 2 of this act and who is collecting a blood sample for forensic testing pursuant to a search warrant, a waiver of the warrant requirement, or exigent circumstances.

**Sec.**  RCW 46.61.506 and 2013 c 3 s 37 are each amended to read as follows:

(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.08 or the person's THC concentration is less than 5.00, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

(2)(a) The breath analysis of the person's alcohol concentration shall be based upon grams of alcohol per two hundred ten liters of breath.

(b) The blood analysis of the person's THC concentration shall be based upon nanograms per milliliter of whole blood.

(c) The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

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

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

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

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

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

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

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

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

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

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

(b) For purposes of this section, "prima facie evidence" is evidence of sufficient circumstances that would support a logical and reasonable inference of the facts sought to be proved. In assessing whether there is sufficient evidence of the foundational facts, the court or administrative tribunal is to assume the truth of the prosecution's or department's evidence and all reasonable inferences from it in a light most favorable to the prosecution or department.

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

(5) When a blood test is administered under the provisions of RCW 46.20.308, or pursuant to a search warrant, exigent circumstances, or a waiver of the warrant requirement, the withdrawal of blood for the purpose of determining its alcoholic or drug content may be performed only by a physician, a registered nurse, a licensed practical nurse, a nursing assistant as defined in chapter 18.88A RCW, a physician assistant as defined in chapter 18.71A RCW, a first responder as defined in chapter 18.73 RCW, an emergency medical technician as defined in chapter 18.73 RCW, a health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood. This limitation shall not apply to the taking of breath specimens.

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

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

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

No physician, registered nurse, ((~~qualified technician~~))licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, forensic phlebotomist under section 3 of this act, or any technician trained in withdrawing blood, or hospital, or duly licensed clinical laboratory employing or utilizing services of such physician, registered nurse, licensed practical nurse, nursing assistant, physician assistant, first responder, emergency medical technician, health care assistant, or qualified technician, shall incur any civil or criminal liability as a result of the act of withdrawing blood from any person when directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant, a waiver of the search warrant requirement, exigent circumstances, or RCW 46.20.308, as now or hereafter amended. Refusal by a physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood, or hospital, or duly licensed clinical laboratory employing or utilizing services of such physician, registered nurse, licensed practical nurse, nursing assistant, physician assistant, first responder, emergency medical technician, health care assistant, or qualified technician, to withdraw blood shall not constitute a refusal to obey a law enforcement officer, obstruction of a law enforcement investigation, or otherwise subject said person to criminal or civil liability: PROVIDED, That nothing in this section shall relieve any physician, registered nurse, licensed practical nurse, nursing assistant, physician assistant, first responder, emergency medical technician, health care assistant, forensic phlebotomist, qualified technician, or hospital or duly licensed clinical laboratory from civil liability arising from the use of improper procedures or failing to exercise the required standard of care.

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