

SENATE BILL 5064

State of Washington 52nd Legislature 1991 Regular Session

By Senators Nelson, Rasmussen, Oke, Johnson, Bailey and Thorsness.

Read first time January 17, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to drivers' licenses; amending RCW 46.04.580,
2 46.20.308, 46.20.311, 46.20.311, 46.20.391, 46.61.515, and 46.68.060;
3 adding a new section to chapter 46.04 RCW; adding new sections to
4 chapter 46.20 RCW; creating new sections; prescribing penalties; making
5 an appropriation; providing an effective date; and declaring an
6 emergency.

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

8 NEW SECTION. **Sec. 1.** The purpose of this act is:

9 (1) To provide safety for all persons using the highways of this
10 state by quickly suspending or revoking the driving privilege of those
11 persons who have shown themselves to be safety hazards by driving with
12 an excessive concentration of alcohol in their bodies; and

1 (2) To guard against the potential for any erroneous deprivation of
2 the driving privilege by providing an opportunity for administrative
3 review prior to the effective date of the suspension or revocation.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.04 RCW
5 to read as follows:

6 "Alcohol concentration" means (1) the grams of alcohol per two
7 hundred ten liters of a person's breath, or (2) the percent by weight
8 of alcohol in a person's blood.

9 **Sec. 3.** RCW 46.04.580 and 1990 c 250 s 22 are each amended to read
10 as follows:

11 "Suspend," in all its forms, means invalidation for any period less
12 than one calendar year and thereafter until reinstatement. However,
13 under RCW 46.61.515 and section 5 of this act the invalidation may last
14 for more than one calendar year.

15 **Sec. 4.** RCW 46.20.308 and 1989 c 337 s 8 are each amended to read
16 as follows:

17 (1) Any person who operates a motor vehicle within this state is
18 deemed to have given consent, subject to the provisions of RCW
19 46.61.506, to a test or tests of his or her breath or blood for the
20 purpose of determining the alcoholic content of his or her breath or
21 blood if arrested for any offense where, at the time of the arrest, the
22 arresting officer has reasonable grounds to believe the person had been
23 driving or was in actual physical control of a motor vehicle while
24 under the influence of intoxicating liquor.

25 (2) The test or tests of breath shall be administered at the
26 direction of a law enforcement officer having reasonable grounds to
27 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. However, in those instances where: ((a)) The
3 person is incapable due to physical injury, physical incapacity, or
4 other physical limitation, of providing a breath sample; or ((b) ~~as a~~
5 ~~result of a traffic accident~~)) the person is being treated for a
6 medical condition in a hospital, clinic, doctor's office, or other
7 similar facility in which a breath testing instrument is not present,
8 a blood test shall be administered by a qualified person as provided in
9 RCW 46.61.506(4). The officer shall inform the person of his or her
10 right to refuse the breath or blood test, and of his or her right to
11 have additional tests administered by any qualified person of his or
12 her choosing as provided in RCW 46.61.506. The officer shall warn the
13 driver that (a) his or her privilege to drive will be revoked or denied
14 if he or she refuses to submit to the test, ((and)) (b) that his or her
15 privilege to drive will be suspended, revoked, or denied if the test is
16 administered and the test indicates the alcohol concentration of the
17 person's breath or blood is 0.10 or more, and (c) that his or her
18 refusal to take the test may be used in a criminal trial.

19 (3) Except as provided in this section, the test administered shall
20 be of the breath only. If an individual is unconscious or is under
21 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
22 or vehicular assault as provided in RCW 46.61.522, or if an individual
23 is under arrest for the crime of driving while under the influence of
24 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
25 results from an accident in which another person has been injured and
26 there is a reasonable likelihood that such other person may die as a
27 result of injuries sustained in the accident, a breath or blood test
28 may be administered without the consent of the individual so arrested.

29 (4) Any person who is dead, unconscious, or who is otherwise in a
30 condition rendering him or her incapable of refusal, shall be deemed

1 not to have withdrawn the consent provided by subsection (1) of this
2 section and the test or tests may be administered, subject to the
3 provisions of RCW 46.61.506, and the person shall be deemed to have
4 received the warnings required under subsection (2) of this section.

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

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

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

22 (b) Serve notice in writing on the person on behalf of the
23 department of his or her right to a hearing, specifying the steps he or
24 she must take to obtain a hearing. Within five days after the notice
25 has been given, the person may, in writing, request a formal hearing as
26 provided by subsection (8) of this section. If such request is made by
27 mail it must be postmarked within five days after the notice has been
28 given;

29 (c) Confiscate the person's Washington state license or permit to
30 drive, if any;

1 (d) Issue a temporary license to be effective twelve hours after
2 the time of arrest and valid for thirty days from the date of arrest or
3 until the suspension, revocation, or denial of the person's license,
4 permit, or privilege to drive is sustained at a hearing pursuant to
5 subsection (8) of this section, whichever occurs first. No temporary
6 license is valid to any greater degree than the license or permit that
7 it replaces;

8 (e) Immediately notify the department of licensing of the arrest
9 and transmit to the department of licensing any confiscated license or
10 permit and a sworn report that states:

11 (i) That the officer had reasonable grounds to believe the arrested
12 person had been driving or was in actual physical control of a motor
13 vehicle within this state while under the influence of intoxicating
14 liquor or drugs, or both;

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 0.10
19 or more; and

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

22 (7) The department of licensing, upon the receipt of a sworn report
23 of the law enforcement officer that the officer had reasonable grounds
24 to believe the arrested person had been driving or was in actual
25 physical control of a motor vehicle within this state while under the
26 influence of intoxicating liquor and that (a) the person had refused to
27 submit to the test or tests upon the request of the law enforcement
28 officer after being informed that refusal would result in the
29 revocation of the person's privilege to drive, or (b) a test was
30 administered and the results indicated that the alcohol concentration

1 of the person's breath or blood was 0.10 or more, shall suspend,
2 revoke, or deny the person's license or permit to drive or any
3 nonresident operating privilege, such suspension, revocation, or denial
4 to be effective thirty days from the date of arrest or when sustained
5 at a hearing pursuant to subsection (8) of this section, whichever
6 occurs first.

7 ~~((7) Upon revoking the license or permit to drive or the~~
8 ~~nonresident operating privilege of any person, the department shall~~
9 ~~immediately notify the person involved in writing by personal service~~
10 ~~or by certified mail of its decision and the grounds therefor, and of~~
11 ~~the person's right to a hearing, specifying the steps he or she must~~
12 ~~take to obtain a hearing. Within fifteen days after the notice has~~
13 ~~been given, the person may, in writing, request a formal hearing.))~~

14 (8) Upon timely receipt of ((such)) a request for a formal hearing,
15 the department shall afford the person an opportunity for a hearing as
16 provided in RCW 46.20.329 and 46.20.332. The hearing shall be
17 conducted in the county of the arrest, except that all or part of the
18 hearing may, at the discretion of the department, be conducted by
19 telephone or other electronic means. For the purposes of this section,
20 the scope of ((such)) the hearing shall cover the issues of whether a
21 law enforcement officer had reasonable grounds to believe the person
22 had been driving or was in actual physical control of a motor vehicle
23 within this state while under the influence of intoxicating liquor,
24 whether the person was placed under arrest, and whether (a) the person
25 refused to submit to the test or tests upon request of the officer
26 after having been informed that such refusal would result in the
27 revocation of the person's privilege to drive or, (b) if a test was
28 administered, whether the applicable requirements of this section were
29 satisfied before the administration of the test or tests, whether the
30 person submitted to the test or tests, or whether a test was

1 administered without express consent as permitted under this section,
2 and whether the test or tests indicated that the alcohol concentration
3 of the person's breath or blood was 0.10 or more. The sworn report
4 submitted by a law enforcement officer shall be prima facie evidence
5 that the officer had reasonable grounds to believe the person had been
6 driving or was in actual physical control of a motor vehicle within
7 this state while under the influence of intoxicating liquor, that the
8 officer complied with the requirements of this section, and that the
9 testing instrument was in proper working condition. ((The department
10 shall order that the revocation either be rescinded or sustained. Any
11 decision by the department revoking a person's driving privilege shall
12 be stayed and shall not take effect while a formal hearing is pending
13 as provided in this section or during the pendency of a subsequent
14 appeal to superior court so long as there is no conviction for a moving
15 violation or no finding that the person has committed a traffic
16 infraction that is a moving violation during pendency of the hearing
17 and appeal.

18 (8)) (9) Failure of the person to request a hearing within the
19 time limit established by subsection (6) of this section, or failure to
20 attend or participate in such a hearing, constitutes a default and
21 results in the loss of that person's right to a hearing.

22 (10) 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 suspension, revocation, or denial by the department in the manner
27 provided in RCW 46.20.334. The filing of the appeal does not stay the
28 effective date of the suspension, revocation, or denial. A petition
29 filed under this subsection must include the petitioner's grounds for
30 requesting review. Upon granting petitioner's request for review, the

1 court shall review the department's final order of suspension,
2 revocation, or denial as expeditiously as possible. If judicial relief
3 is sought for a stay or other temporary remedy from the department's
4 action, the court shall not grant such relief unless the court finds
5 that:

6 (a) The petitioner is likely to prevail when the court finally
7 disposes of the matter;

8 (b) Without relief the petitioner will suffer irreparable injury;
9 and

10 (c) The threat to the safety of persons on the public highways is
11 not sufficiently serious to justify the department's action in the
12 circumstances.

13 ~~((9))~~ (11) When it has been finally determined under the
14 procedures of this section that a nonresident's privilege to operate a
15 motor vehicle in this state has been suspended, revoked, or denied the
16 department shall give information in writing of the action taken to the
17 motor vehicle administrator of the state of the person's residence and
18 of any state in which he or she has a license.

19 NEW SECTION. Sec. 5. A new section is added to chapter 46.20 RCW
20 to read as follows:

21 (1) Pursuant to RCW 46.20.308, the department shall suspend,
22 revoke, or deny the arrested person's license, permit to drive, driving
23 privilege, or any nonresident privilege as follows:

- 24 (a) In the case of a person who has refused a test or tests:
25 (i) For a first refusal within five years preceding the date of
26 refusal, revocation or denial for one year;
27 (ii) For a second or subsequent refusal within five years preceding
28 the date of refusal, revocation or denial for two years.

1 (b) In the case of an incident where a person has submitted to or
2 been administered a test or tests indicating that the alcohol
3 concentration of the person's breath or blood was 0.10 or more:

4 (i) For a first incident within five years, where there has been no
5 previous conviction of RCW 46.61.502 or 46.61.504 within the five-year
6 period preceding the current incident, suspension, or denial until the
7 person reaches age nineteen or for ninety days, whichever is longer;

8 (ii) For a second incident within five years, revocation or denial
9 for one year. A previous conviction under RCW 46.61.502 or 46.61.504
10 within the five-year period preceding the current incident, that did
11 not result in a suspension or denial under this subsection, shall be
12 considered a previous incident for purposes of this subsection;

13 (iii) For a third or subsequent incident within five years,
14 revocation or denial for two years. Previous convictions under RCW
15 46.61.502, 46.61.504, 46.61.520, or 46.61.522 within the five-year
16 period preceding the current incident, that did not result in a
17 suspension, revocation, or denial under this subsection, shall be
18 considered previous incidents for purposes of this subsection.

19 (2) A diagnostic evaluation and treatment recommendation shall be
20 prepared by an alcoholism agency approved by the department of social
21 and health services or a qualified probation department approved by the
22 department of social and health services. A copy of the report shall
23 be forwarded to the department of licensing. The department shall not
24 grant or reinstate a person's privilege to drive that has been
25 suspended, revoked, or denied under subsection (1) of this section
26 until it has determined the person's eligibility for licensing based
27 upon the report provided by an approved alcoholism agency or probation
28 department and shall deny reinstatement until enrollment and
29 participation in an approved program has been established and the
30 person is otherwise qualified.

1 **Sec. 6.** RCW 46.20.311 and 1990 c 250 s 45 are each amended to read
2 as follows:

3 (1) The department shall not suspend a driver's license or
4 privilege to drive a motor vehicle on the public highways for a fixed
5 period of more than one year, except as permitted under RCW 46.20.342
6 or 46.61.515. Whenever the license or driving privilege of any person
7 is suspended by reason of a conviction, a finding that a traffic
8 infraction has been committed, pursuant to chapter 46.29 RCW, or
9 pursuant to RCW 46.20.291, the suspension shall remain in effect until
10 the person gives and thereafter maintains proof of financial
11 responsibility for the future as provided in chapter 46.29 RCW. The
12 department shall not issue to the person a new, duplicate, or renewal
13 license until the person pays a reissue fee of twenty dollars. If the
14 suspension is the result of a violation of RCW 46.61.502 or 46.61.504,
15 the reissue fee shall be (~~fifty~~) one hundred dollars.

16 (2) Any person whose license or privilege to drive a motor vehicle
17 on the public highways has been revoked, unless the revocation was for
18 a cause which has been removed, is not entitled to have the license or
19 privilege renewed or restored until: (a) After the expiration of one
20 year from the date the license or privilege to drive was revoked; (b)
21 after the expiration of the applicable revocation period provided by
22 RCW 46.61.515(3) (b) or (c); (c) after the expiration of two years for
23 persons convicted of vehicular homicide; (d) after the expiration of
24 one year in cases of revocation for the first refusal within five years
25 to submit to a chemical test under RCW 46.20.308; (e) after the
26 expiration of two years in cases of revocation for the second refusal
27 within five years to submit to a chemical test under RCW 46.20.308; or
28 (f) after the expiration of the applicable revocation period provided
29 by RCW 46.20.265. After the expiration of the appropriate period, the
30 person may make application for a new license as provided by law

1 together with a reissue fee in the amount of twenty dollars, but if the
2 revocation is the result of a violation of RCW 46.20.308, 46.61.502, or
3 46.61.504, the reissue fee shall be (~~fifty~~) one hundred dollars.
4 Except for a revocation under RCW 46.20.265, the department shall not
5 then issue a new license unless it is satisfied after investigation of
6 the driving ability of the person that it will be safe to grant the
7 privilege of driving a motor vehicle on the public highways, and until
8 the person gives and thereafter maintains proof of financial
9 responsibility for the future as provided in chapter 46.29 RCW. For a
10 revocation under RCW 46.20.265, the department shall not issue a new
11 license unless it is satisfied after investigation of the driving
12 ability of the person that it will be safe to grant that person the
13 privilege of driving a motor vehicle on the public highways.

14 (3) Whenever the driver's license of any person is suspended
15 pursuant to Article IV of the nonresident violators compact or RCW
16 46.23.020, the department shall not issue to the person any new or
17 renewal license until the person pays a reissue fee of twenty dollars.
18 If the suspension is the result of a violation of the laws of another
19 state, province, or other jurisdiction involving (a) the operation or
20 physical control of a motor vehicle upon the public highways while
21 under the influence of intoxicating liquor or drugs, or (b) the refusal
22 to submit to a chemical test or tests of the driver's breath or blood
23 alcohol content, the reissue fee shall be (~~fifty~~) one hundred
24 dollars.

25 **Sec. 7.** RCW 46.20.311 and 1991 c ... s 6 (section 6 of this act)
26 are each amended to read as follows:

27 (1) The department shall not suspend a driver's license or
28 privilege to drive a motor vehicle on the public highways for a fixed
29 period of more than one year, except as permitted under RCW 46.20.342

1 ~~((or))~~, 46.61.515, or section 5 of this act. Except for a suspension
2 under section 5(1)(b)(i) of this act, whenever the license or driving
3 privilege of any person is suspended by reason of a conviction, a
4 finding that a traffic infraction has been committed, pursuant to
5 chapter 46.29 RCW, or pursuant to RCW 46.20.291 ~~((or 46.20.308))~~, the
6 suspension shall remain in effect until the person gives and thereafter
7 maintains proof of financial responsibility for the future as provided
8 in chapter 46.29 RCW. The department shall not issue to the person a
9 new, duplicate, or renewal license until the person pays a reissue fee
10 of twenty dollars. If the suspension is the result of a violation of
11 RCW 46.61.502 or 46.61.504 or was imposed under RCW 46.20.308, the
12 reissue fee shall be one hundred dollars. If the suspension was
13 imposed under section 5(1)(b)(i) of this act, the suspension shall
14 remain in effect and the department shall not issue any new, duplicate,
15 or renewal license until the person pays a reinstatement fee of one
16 hundred dollars.

17 (2) Any person whose license or privilege to drive a motor vehicle
18 on the public highways has been revoked, unless the revocation was for
19 a cause which has been removed, is not entitled to have the license or
20 privilege renewed or restored until: (a) After the expiration of one
21 year from the date the license or privilege to drive was revoked; (b)
22 after the expiration of the applicable revocation period provided by
23 RCW 46.61.515(3) (b) or (c); (c) after the expiration of two years for
24 persons convicted of vehicular homicide; (d) after the expiration of
25 ~~((one year in cases of revocation for the first refusal within five~~
26 ~~years to submit to a chemical test under RCW 46.20.308; (e) after the~~
27 ~~expiration of two years in cases of revocation for the second refusal~~
28 ~~within five years to submit to a chemical test under RCW 46.20.308; or~~
29 ~~(f))~~ the applicable revocation period provided by section 5 of this
30 act; or (e) after the expiration of the applicable revocation period

1 provided by RCW 46.20.265. After the expiration of the appropriate
2 period, the person may make application for a new license as provided
3 by law together with a reissue fee in the amount of twenty dollars, but
4 if the revocation is the result of a violation of RCW 46.20.308,
5 46.61.502, or 46.61.504 or was imposed under RCW 46.20.308, the reissue
6 fee shall be one hundred dollars. Except for a revocation under RCW
7 46.20.265, the department shall not then issue a new license unless it
8 is satisfied after investigation of the driving ability of the person
9 that it will be safe to grant the privilege of driving a motor vehicle
10 on the public highways, and until the person gives and thereafter
11 maintains proof of financial responsibility for the future as provided
12 in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the
13 department shall not issue a new license unless it is satisfied after
14 investigation of the driving ability of the person that it will be safe
15 to grant that person the privilege of driving a motor vehicle on the
16 public highways.

17 (3) Whenever the driver's license of any person is suspended
18 pursuant to Article IV of the nonresident violators compact or RCW
19 46.23.020, the department shall not issue to the person any new or
20 renewal license until the person pays a reissue fee of twenty dollars.
21 If the suspension is the result of a violation of the laws of another
22 state, province, or other jurisdiction involving (a) the operation or
23 physical control of a motor vehicle upon the public highways while
24 under the influence of intoxicating liquor or drugs, or (b) the refusal
25 to submit to a chemical test or tests of the driver's breath or blood
26 alcohol content, the reissue fee shall be one hundred dollars.

27 **Sec. 8.** RCW 46.20.391 and 1985 c 407 s 5 are each amended to read
28 as follows:

1 (1) Any person licensed under this chapter whose driving privilege
2 has been suspended under section 5 (1)(b)(i) of this act or who is
3 convicted of an offense relating to motor vehicles for which suspension
4 or revocation of the driver's license is mandatory, other than
5 vehicular homicide or vehicular assault, may submit to the department
6 an application for an occupational driver's license. The department,
7 upon receipt of the prescribed fee and upon determining that the
8 petitioner is engaged in an occupation or trade that makes it essential
9 that the petitioner operate a motor vehicle, may issue an occupational
10 driver's license and may set definite restrictions as provided in RCW
11 46.20.394. No person may petition for, and the department shall not
12 issue, an occupational driver's license that is effective during the
13 first thirty days of any suspension or revocation imposed under RCW
14 46.61.515 or section 5 (1)(b)(i) of this act. A person aggrieved by
15 the decision of the department on the application for an occupational
16 driver's license may request a hearing as provided by rule of the
17 department.

18 (2) An applicant for an occupational driver's license is eligible
19 to receive such license only if:

20 (a) Within one year immediately preceding the present conviction or
21 administrative action, the applicant has not been convicted of any
22 offense relating to motor vehicles for which suspension or revocation
23 of a driver's license is mandatory; and

24 (b) Within five years immediately preceding the present conviction
25 or administrative action, the applicant has not been convicted of
26 driving or being in actual physical control of a motor vehicle while
27 under the influence of intoxicating liquor under RCW 46.61.502 or
28 46.61.504, of vehicular homicide under RCW 46.61.520, or of vehicular
29 assault under RCW 46.61.522, or had a license administratively
30 suspended or revoked under section 5 (1)(b)(i) of this act; and

1 (c) The applicant is engaged in an occupation or trade that makes
2 it essential that he or she operate a motor vehicle; and

3 (d) The applicant files satisfactory proof of financial
4 responsibility pursuant to chapter 46.29 RCW, unless the suspension was
5 imposed under section 5(1)(b)(i) of this act.

6 (3) The director shall cancel an occupational driver's license upon
7 receipt of notice that the holder thereof has had a driver's license
8 administratively suspended or revoked under RCW 46.20.308 or has been
9 convicted of operating a motor vehicle in violation of its
10 restrictions, or of an offense that pursuant to chapter 46.20 RCW would
11 warrant suspension or revocation of a regular driver's license. The
12 cancellation is effective as of the date of the conviction, and
13 continues with the same force and effect as any suspension or
14 revocation under this title.

15 NEW SECTION. **Sec. 9.** A new section is added to chapter 46.20 RCW
16 to read as follows:

17 (1) Any person licensed under this chapter or any nonresident
18 granted the privilege of driving a motor vehicle on the highways of
19 this state, whose driver's license or driving privilege has been
20 suspended or revoked, other than for vehicular homicide, vehicular
21 assault, or for a physical or mental disability that would affect that
22 person's ability to operate a motor vehicle with safety upon the
23 highways, may submit to the department an application for a provisional
24 driver's license for purposes of participation in an alcohol or drug
25 abuse treatment program approved by the department of social and health
26 services. The department, upon receipt of the fee prescribed by this
27 section and upon determining that the applicant is engaged in a
28 treatment program approved by the department of social and health
29 services that makes it essential that the applicant operate a motor

1 vehicle, may issue a provisional driver's license. No person may
2 petition for, and the department shall not issue, a provisional
3 driver's license that is effective during the first thirty days of any
4 suspension or revocation imposed under RCW 46.61.515 or section 5 of
5 this act.

6 (2) An applicant for a provisional driver's license is eligible to
7 receive such license only if:

8 (a) The applicant is engaged in a program of treatment that makes
9 it essential that he or she operate a motor vehicle; and

10 (b) The applicant files satisfactory proof of financial
11 responsibility pursuant to chapter 46.29 RCW, unless the suspension was
12 imposed under section 5(1)(b)(i) of this act; and

13 (c) The applicant pays to the department a treatment assessment fee
14 of twenty-five dollars, such fee to be deposited in a special sober or
15 suspended account, within the department of social and health services,
16 to be administered by the division of alcohol and substance abuse, to
17 be used to pay the cost of the diagnostic evaluation or assessment
18 required under section 5(2) of this act for indigent or low-income
19 individuals.

20 (3) In issuing a provisional driver's license under this section,
21 the department shall set forth in detail the specific hours of the day
22 during which the person may drive to and from his or her place of
23 treatment; the days of the week during which the license may be used;
24 the general routes over which the person may travel; and the expiration
25 date of the license, such date to correspond to the ending date of any
26 suspension or revocation of the person's driver's license or driving
27 privilege, or the date the person's treatment program is to be
28 concluded, whichever occurs first. These restrictions shall be
29 prepared in written form by the department, such document to be carried
30 in the vehicle at all times and presented to a law enforcement officer

1 under the same terms as the provisional driver's license. Any
2 violation of the restrictions constitutes a violation of RCW 46.20.342
3 and subjects the person to all procedures and penalties therefor.

4 (4) The department shall cancel a provisional driver's license upon
5 receipt of notice that the holder thereof has been convicted of
6 operating a motor vehicle in violation of its restrictions, or of an
7 offense that pursuant to this chapter would warrant suspension or
8 revocation of a regular driver's license, or upon the recommendation of
9 a treatment agency for nonparticipation in a treatment program. The
10 cancellation is effective as of the date of the conviction, or the date
11 a recommendation is accepted from a treatment agency, and continues
12 with the same force and effect as any suspension or revocation under
13 this title.

14 **Sec. 10.** RCW 46.61.515 and 1985 c 352 s 1 are each amended to read
15 as follows:

16 (1) Every person who is convicted of a violation of RCW 46.61.502
17 or 46.61.504 shall be punished by imprisonment for not less than
18 twenty-four consecutive hours nor more than one year, and by a fine of
19 not less than two hundred fifty dollars and not more than one thousand
20 dollars. Unless the judge finds the person to be indigent, two hundred
21 fifty dollars of the fine shall not be suspended or deferred. Twenty-
22 four consecutive hours of the jail sentence shall not be suspended or
23 deferred unless the judge finds that the imposition of the jail
24 sentence will pose a risk to the defendant's physical or mental well-
25 being. Whenever the mandatory jail sentence is suspended or deferred,
26 the judge must state, in writing, the reason for granting the
27 suspension or deferral and the facts upon which the suspension or
28 deferral is based. The court may impose conditions of probation that
29 may include nonrepetition, alcohol or drug treatment, supervised

1 probation, or other conditions that may be appropriate. The convicted
2 person shall, in addition, be required to complete a course in an
3 alcohol information school approved by the department of social and
4 health services or more intensive treatment in a program approved by
5 the department of social and health services, as determined by the
6 court. A diagnostic evaluation and treatment recommendation shall be
7 prepared under the direction of the court by an alcoholism agency
8 approved by the department of social and health services or a qualified
9 probation department approved by the department of social and health
10 services. A copy of the report shall be forwarded to the department of
11 licensing. Based on the diagnostic evaluation, the court shall
12 determine whether the convicted person shall be required to complete a
13 course in an alcohol information school approved by the department of
14 social and health services or more intensive treatment in a program
15 approved by the department of social and health services. Standards
16 for approval for alcohol treatment programs shall be prescribed by rule
17 under the administrative procedure act, chapter 34.05 RCW. The courts
18 shall periodically review the costs of alcohol information schools and
19 treatment programs within their jurisdictions.

20 (2) On a second or subsequent conviction for driving or being in
21 physical control of a motor vehicle while under the influence of
22 intoxicating liquor or drugs within a five-year period a person shall
23 be punished by imprisonment for not less than seven days nor more than
24 one year and by a fine of not less than five hundred dollars and not
25 more than two thousand dollars. District courts and courts organized
26 under chapter 35.20 RCW are authorized to impose such fine. Unless the
27 judge finds the person to be indigent, five hundred dollars of the fine
28 shall not be suspended or deferred. The jail sentence shall not be
29 suspended or deferred unless the judge finds that the imposition of the
30 jail sentence will pose a risk to the defendant's physical or mental

1 well-being. Whenever the mandatory jail sentence is suspended or
2 deferred, the judge must state, in writing, the reason for granting the
3 suspension or deferral and the facts upon which the suspension or
4 deferral is based. If, at the time of a second or subsequent
5 conviction, the driver is without a license or permit because of a
6 previous suspension or revocation, the minimum mandatory sentence shall
7 be ninety days in jail and a two hundred dollar fine. The penalty so
8 imposed shall not be suspended or deferred. The person shall, in
9 addition, be required to complete a diagnostic evaluation by an
10 alcoholism agency approved by the department of social and health
11 services or a qualified probation department approved by the department
12 of social and health services. The report shall be forwarded to the
13 department of licensing. If the person is found to have an alcohol or
14 drug problem requiring treatment, the person shall complete treatment
15 at an approved alcoholism treatment facility or approved drug treatment
16 center.

17 In addition to any nonsuspendable and nondeferrable jail sentence
18 required by this subsection, the court shall sentence a person to a
19 term of imprisonment not exceeding one hundred eighty days and shall
20 suspend but shall not defer the sentence for a period not exceeding two
21 years. The suspension of the sentence may be conditioned upon
22 nonrepetition, alcohol or drug treatment, supervised probation, or
23 other conditions that may be appropriate. The sentence may be imposed
24 in whole or in part upon violation of a condition of suspension during
25 the suspension period.

26 (3) The license or permit to drive or any nonresident privilege of
27 any person convicted of driving or being in physical control of a motor
28 vehicle while under the influence of intoxicating liquor or drugs
29 shall:

1 (a) On the first conviction under either offense, where there has
2 been no previous suspension or denial imposed under section 5(1)(b) of
3 this act for the incident upon which the conviction is based, or where
4 there has been no previous incident resulting in a suspension,
5 revocation, or denial under section 5(1)(b) of this act within the
6 five-year period preceding the current conviction, be suspended by the
7 department until the person reaches age nineteen or for ninety days,
8 whichever is longer. The department of licensing shall determine the
9 person's eligibility for licensing based upon the reports provided by
10 the designated alcoholism agency, drug treatment center, or probation
11 department and shall deny reinstatement until enrollment and
12 participation in an approved program has been established and the
13 person is otherwise qualified;

14 (b) On a second conviction under either offense within a five-year
15 period, where there has been no previous revocation or denial imposed
16 under section 5(1)(b) of this act for the incident upon which the
17 conviction is based, be revoked by the department for one year. A
18 previous incident resulting in a suspension, revocation, or denial
19 under section 5(1)(b) of this act within the five-year period preceding
20 the current conviction shall be considered a previous conviction for
21 purposes of this subsection. The department of licensing shall
22 determine the person's eligibility for licensing based upon the reports
23 provided by the designated alcoholism agency, drug treatment center, or
24 probation department and shall deny reinstatement until satisfactory
25 progress in an approved program has been established and the person is
26 otherwise qualified;

27 (c) On a third or subsequent conviction of driving or being in
28 physical control of a motor vehicle while under the influence of
29 intoxicating liquor or drugs, vehicular homicide, or vehicular assault,
30 or any combination thereof within a five-year period, where there has

1 been no previous revocation or denial imposed under section 5(1)(b) of
2 this act for the incident upon which the conviction is based, be
3 revoked by the department for two years. Previous incidents resulting
4 in suspension, revocation, or denial under section 5(1)(b) of this act
5 within the five-year period preceding the current conviction shall be
6 considered previous convictions for purposes of this subsection.

7 (4) In any case provided for in this section, where a driver's
8 license is to be revoked or suspended, the revocation or suspension
9 shall be stayed and shall not take effect until after the determination
10 of any appeal from the conviction which may lawfully be taken, but in
11 case the conviction is sustained on appeal the revocation or suspension
12 takes effect as of the date that the conviction becomes effective for
13 other purposes.

14 **Sec. 11.** RCW 46.68.060 and 1969 c 99 s 11 are each amended to read
15 as follows:

16 (1) There is hereby created in the state treasury a fund to be
17 known as the highway safety fund to the credit of which shall be
18 deposited all moneys directed by law to be deposited therein. This
19 fund shall be used for carrying out the provisions of law relating to
20 driver licensing, driver improvement, financial responsibility, cost of
21 furnishing abstracts of driving records ~~((and))~~, maintaining ~~((such))~~
22 the case records(~~(, and))~~ necessary to carry out the purposes set forth
23 in RCW 43.59.010, and as otherwise provided in subsection (2) of this
24 section.

25 (2) The sum of ten dollars shall be paid from the highway safety
26 fund to law enforcement agencies for each reinstatement fee collected
27 under RCW 46.20.311 due to a suspension or revocation arising from an
28 arrest under RCW 46.61.502 or 46.61.504 as reimbursement for the
29 required administrative procedures.

1 NEW SECTION. **Sec. 12.** The traffic safety commission shall
2 undertake a study of the effectiveness of this act and shall report its
3 finding to the governor and the appropriate legislative committees
4 within thirty months of the effective date of this section.

5 NEW SECTION. **Sec. 13.** The sum of dollars, or as
6 much thereof as may be necessary, is appropriated to the department of
7 licensing from the highway safety fund for the biennium ending June 30,
8 1993, to carry out this act.

9 NEW SECTION. **Sec. 14.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 15.** The department may adopt rules
14 necessary to carry out this act.

15 NEW SECTION. **Sec. 16.** Sections 6 and 13 of this act are
16 necessary for the immediate preservation of the public peace, health,
17 or safety, or support of the state government and its existing public
18 institutions, and shall take effect immediately. The remainder of this
19 act shall take effect on July 1, 1992. The director of licensing may
20 immediately take such steps as are necessary to insure that all
21 sections of this act are implemented on their respective effective
22 dates.