
SENATE BILL 5399

State of Washington

52nd Legislature

1991 Regular Session

By Senator Hansen.

Read first time January 30, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to exceptions to the implied consent law; 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 1989 c 337 s 8 are each amended to read
5 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 alcoholic content of his or her breath or
10 blood if arrested for any offense where, at the time of the arrest, the
11 arresting officer has reasonable grounds to believe the person had been
12 driving or was in actual physical control of a motor vehicle while
13 under the influence of intoxicating liquor.

14 (2) The test or tests of breath shall be administered at the
15 direction of a law enforcement officer having reasonable grounds to

1 believe the person to have been driving or in actual physical control
2 of a motor vehicle within this state while under the influence of
3 intoxicating liquor. However, in those instances where: (a) The
4 person is incapable due to physical injury, physical incapacity, or
5 other physical limitation, of providing a breath sample; or (b) as a
6 result of a traffic accident the person is being treated for a medical
7 condition in a hospital, clinic, doctor's office, or other similar
8 facility in which a breath testing instrument is not present, a blood
9 test shall be administered by a qualified person as provided in RCW
10 46.61.506(4). The officer shall inform the person of his or her right
11 to refuse the breath or blood test, and of his or her right to have
12 additional tests administered by any qualified person of his or her
13 choosing as provided in RCW 46.61.506. The officer shall warn the
14 driver that (a) his or her privilege to drive will be revoked or denied
15 if he or she refuses to submit to the test, and (b) that his or her
16 refusal to take the test may be used in a criminal trial.

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

27 (4) Any person who is dead, unconscious, or who is otherwise in a
28 condition rendering him or her incapable of refusal, shall be deemed
29 not to have withdrawn the consent provided by subsection (1) of this
30 section and the test or tests may be administered, subject to the

1 provisions of RCW 46.61.506, and the person shall be deemed to have
2 received the warnings required under subsection (2) of this section.

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

8 (6) The department of licensing, upon the receipt of a sworn report
9 of the law enforcement officer that the officer had reasonable grounds
10 to believe the arrested person had been driving or was in actual
11 physical control of a motor vehicle within this state while under the
12 influence of intoxicating liquor and that the person had refused to
13 submit to the test or tests upon the request of the law enforcement
14 officer after being informed that refusal would result in the
15 revocation of the person's privilege to drive, shall revoke the
16 person's license or permit to drive or any nonresident operating
17 privilege.

18 (7) Upon revoking the license or permit to drive or the nonresident
19 operating privilege of any person, the department shall immediately
20 notify the person involved in writing by personal service or by
21 certified mail of its decision and the grounds therefor, and of the
22 person's right to a hearing, specifying the steps he or she must take
23 to obtain a hearing. Within fifteen days after the notice has been
24 given, the person may, in writing, request a formal hearing. Upon
25 receipt of such request, the department shall afford the person an
26 opportunity for a hearing as provided in RCW 46.20.329 and 46.20.332.
27 The hearing shall be conducted in the county of the arrest. For the
28 purposes of this section, the scope of such hearing shall cover the
29 issues of whether a law enforcement officer had reasonable grounds to
30 believe the person had been driving or was in actual physical control

1 of a motor vehicle within this state while under the influence of
2 intoxicating liquor, whether the person was placed under arrest, and
3 whether the person refused to submit to the test or tests upon request
4 of the officer after having been informed that such refusal would
5 result in the revocation of the person's privilege to drive. The
6 department shall order that the revocation either be rescinded or
7 sustained. Any decision by the department revoking a person's driving
8 privilege shall be stayed and shall not take effect while a formal
9 hearing is pending as provided in this section or during the pendency
10 of a subsequent appeal to superior court so long as there is no
11 conviction for a moving violation or no finding that the person has
12 committed a traffic infraction that is a moving violation during
13 pendency of the hearing and appeal.

14 (8) If the revocation is sustained after such a hearing, the person
15 whose license, privilege, or permit is revoked has the right to file a
16 petition in the superior court of the county of arrest to review the
17 final order of revocation by the department in the manner provided in
18 RCW 46.20.334.

19 (9) The department shall rescind the revocation of a person's
20 driving privilege under this section upon notification from the court
21 of record that, for the incident upon which the department based its
22 administrative action:

23 (a)(i) The officer's grounds for believing that the person had been
24 driving or was in actual physical control of a motor vehicle while
25 under the influence of intoxicating liquor were based solely on a
26 nonalcohol or nondrug-related medical condition or (ii) the person's
27 refusal or inability to submit to a breath test was based solely on a
28 nonalcohol or nondrug-related medical condition; and

29 (b) The person has been found not guilty of driving or being in
30 actual physical control of a motor vehicle within this state while

1 under the influence of intoxicating liquor or any drug including any
2 drug prescribed for the medical condition. Upon notification from the
3 court of record of a not guilty finding, the department shall expunge
4 the implied consent violation from the person's driving record.

5 (10) When it has been finally determined under the procedures of
6 this section that a nonresident's privilege to operate a motor vehicle
7 in this state has been revoked, the department shall give information
8 in writing of the action taken to the motor vehicle administrator of
9 the state of the person's residence and of any state in which he or she
10 has a license.