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**SUBSTITUTE HOUSE BILL 1128**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** House Committee on Revenue (originally sponsored by Representatives G. Fisher, Holm, Silver, Vance, Edmondson, Heavey, Foreman, Ballard, Brough, Long, Miller and Brumsickle; by request of Washington State Patrol)

Read first time 03/08/93.

1       AN ACT Relating to fees to fund blood and breath alcohol content  
2 testing; amending RCW 46.61.515; creating a new section; prescribing  
3 penalties; providing an effective date; providing an expiration date;  
4 and declaring an emergency.

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

6       **Sec. 1.** RCW 46.61.515 and 1985 c 352 s 1 are each amended to read  
7 as follows:

8       (1) Every person who is convicted of a violation of RCW 46.61.502  
9 or 46.61.504 shall be punished by imprisonment for not less than  
10 twenty-four consecutive hours nor more than one year, and by a fine of  
11 not less than two hundred fifty dollars and not more than one thousand  
12 dollars. Unless the judge finds the person to be indigent, two hundred  
13 fifty dollars of the fine shall not be suspended or deferred. Twenty-  
14 four consecutive hours of the jail sentence shall not be suspended or  
15 deferred unless the judge finds that the imposition of the jail  
16 sentence will pose a risk to the defendant's physical or mental well-  
17 being. Whenever the mandatory jail sentence is suspended or deferred,  
18 the judge must state, in writing, the reason for granting the  
19 suspension or deferral and the facts upon which the suspension or

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

22 (2) On a second or subsequent conviction for driving or being in  
23 physical control of a motor vehicle while under the influence of  
24 intoxicating liquor or drugs within a five-year period a person shall  
25 be punished by imprisonment for not less than seven days nor more than  
26 one year and by a fine of not less than five hundred dollars and not  
27 more than two thousand dollars. District courts and courts organized  
28 under chapter 35.20 RCW are authorized to impose such fine. Unless the  
29 judge finds the person to be indigent, five hundred dollars of the fine  
30 shall not be suspended or deferred. The jail sentence shall not be  
31 suspended or deferred unless the judge finds that the imposition of the  
32 jail sentence will pose a risk to the defendant's physical or mental  
33 well-being. Whenever the mandatory jail sentence is suspended or  
34 deferred, the judge must state, in writing, the reason for granting the  
35 suspension or deferral and the facts upon which the suspension or  
36 deferral is based. If, at the time of a second or subsequent  
37 conviction, the driver is without a license or permit because of a  
38 previous suspension or revocation, the minimum mandatory sentence shall  
39 be ninety days in jail and a two hundred dollar fine. The penalty so

1 imposed shall not be suspended or deferred. The person shall, in  
2 addition, be required to complete a diagnostic evaluation by an  
3 alcoholism agency approved by the department of social and health  
4 services or a qualified probation department approved by the department  
5 of social and health services. The report shall be forwarded to the  
6 department of licensing. If the person is found to have an alcohol or  
7 drug problem requiring treatment, the person shall complete treatment  
8 at an approved alcoholism treatment ((~~facility~~) program) or approved  
9 drug treatment center.

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

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

23 (a) On the first conviction under either offense, be suspended by  
24 the department until the person reaches age nineteen or for ninety  
25 days, whichever is longer. The department of licensing shall determine  
26 the person's eligibility for licensing based upon the reports provided  
27 by the designated alcoholism agency or probation department and shall  
28 deny reinstatement until enrollment and participation in an approved  
29 program has been established and the person is otherwise qualified;

30 (b) On a second conviction under either offense within a five-year  
31 period, be revoked by the department for one year. The department of  
32 licensing shall determine the person's eligibility for licensing based  
33 upon the reports provided by the designated alcoholism agency or  
34 probation department and shall deny reinstatement until satisfactory  
35 progress in an approved program has been established and the person is  
36 otherwise qualified;

37 (c) On a third or subsequent conviction of driving or being in  
38 physical control of a motor vehicle while under the influence of  
39 intoxicating liquor or drugs, vehicular homicide, or vehicular assault,

1 or any combination thereof within a five-year period, be revoked by the  
2 department for two years.

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

10 (5)(a) In addition to penalties set forth in this section, a one  
11 hundred twenty-five dollar fee shall be assessed to a person who is  
12 either convicted, sentenced to a lesser charge, or given deferred  
13 prosecution, as a result of an arrest for violating RCW 46.61.502,  
14 46.61.504, 46.61.520, or 46.61.522. This fee is for the purpose of  
15 funding the Washington state toxicology laboratory, the Washington  
16 state patrol breath test program, and the department of licensing's  
17 administrative costs.

18 (b) Upon a verified petition by the person assessed the fee, the  
19 court may suspend payment of all or part of the fee if it finds that  
20 the person does not have the ability to pay.

21 (c) When a minor has been adjudicated a juvenile offender for an  
22 offense which, if committed by an adult, would constitute a violation  
23 of any criminal statute of this state the court shall assess the one  
24 hundred twenty-five dollar fee under (a) of this subsection. Upon a  
25 verified petition by a minor assessed the fee, the court may suspend  
26 payment of all or part of the fee if it finds that the minor does not  
27 have the ability to pay the fee.

28 (6) The one hundred twenty-five dollar fee assessed under  
29 subsection (5) of this section shall be collected by the clerk of the  
30 court and distributed as follows:

31 (a) Twenty-five dollars shall be deposited into the highway safety  
32 account to be used by the department of licensing to fund  
33 administrative costs.

34 (b) The court may retain five dollars to defray the costs of  
35 collecting the fees.

36 (c) If the case involves a blood test by the state toxicology  
37 laboratory, the remainder of the fee shall be forwarded to the state  
38 treasurer for deposit in the death investigations account to be used

1 solely for funding the state toxicology laboratory blood testing  
2 program.

3 (d) If the case involves a breath test, the remainder of the fee  
4 shall be forwarded to the state treasurer for deposit in the state  
5 patrol highway account to be used solely for funding the Washington  
6 state patrol breath test program.

7 NEW SECTION. Sec. 2. The Washington state patrol in conjunction  
8 with the traffic safety commission shall use a small percentage of the  
9 revenues generated under the 1993 amendments to section 1 of this act  
10 to perform a study to determine a mechanism for evaluating the best  
11 practice for increasing the conviction rate for persons driving under  
12 the influence of alcohol or drugs. The study must be completed and a  
13 report made to the appropriate committees of the legislature by June  
14 30, 1995.

15 NEW SECTION. Sec. 3. The 1993 amendments to section 1 of this act  
16 expire June 30, 1995.

17 NEW SECTION. Sec. 4. This act is necessary for the immediate  
18 preservation of the public peace, health, or safety, or support of the  
19 state government and its existing public institutions, and shall take  
20 effect July 1, 1993.

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