
SENATE BILL 5339

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By Senators A. Smith, McCaslin, Winsley, Deccio, Fraser, M. Rasmussen and Roach

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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, 46.52.130, 46.61.515, and
3 46.68.060; adding new sections to chapter 46.04 RCW; adding new
4 sections to chapter 46.20 RCW; creating new sections; prescribing
5 penalties; providing an effective date; and declaring an emergency.

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

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

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

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

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

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

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

6 "Suspend," in all its forms, means invalidation for any period less
7 than one calendar year and thereafter until reinstatement. However,
8 under RCW 46.61.515 and section 6 of this act the invalidation may last
9 for more than one calendar year.

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

12 "Test," as the term is used in determining alcohol concentration,
13 means the test of a person's breath for alcohol concentration by
14 infrared test method consisting of the person insufflating deep lung
15 air samples at least twice into the instrument sufficient to allow two
16 separate measurements. There must be sufficient time between the
17 provision of each sample by the person to permit the instrument to
18 measure each sample individually. The two breath samples supplied by
19 the individual shall constitute one test. An accurate test is presumed
20 if the results of each measurement is within plus or minus ten percent
21 of the average of the two measurements.

22 **Sec. 5.** RCW 46.20.308 and 1989 c 337 s 8 are each amended to read
23 as follows:

24 (1) Any person who operates a motor vehicle within this state is
25 deemed to have given consent, subject to the provisions of RCW
26 46.61.506, to a test or tests of his or her breath or blood for the
27 purpose of determining the alcoholic content of his or her breath or
28 blood if arrested for any offense where, at the time of the arrest, the
29 arresting officer has reasonable grounds to believe the person had been
30 driving or was in actual physical control of a motor vehicle while
31 under the influence of intoxicating liquor.

32 (2) The test or tests of breath shall be administered at the
33 direction of a law enforcement officer having reasonable grounds to
34 believe the person to have been driving or in actual physical control
35 of a motor vehicle within this state while under the influence of
36 intoxicating liquor. However, in those instances where: ((a)) The

1 person is incapable due to physical injury, physical incapacity, or
2 other physical limitation, of providing a breath sample; or (~~(b) as a~~
3 ~~result of a traffic accident~~)) the person is being treated for a
4 medical condition in a hospital, clinic, doctor's office, or other
5 similar facility in which a breath testing instrument is not present,
6 a blood test shall be administered by a qualified person as provided in
7 RCW 46.61.506(4). The officer shall inform the person of his or her
8 right to refuse the breath or blood test, and of his or her right to
9 have additional tests administered by any qualified person of his or
10 her choosing as provided in RCW 46.61.506. The officer shall warn the
11 driver that (a) his or her privilege to drive will be revoked or denied
12 if he or she refuses to submit to the test, (~~and~~) (b) that his or her
13 privilege to drive will be suspended, revoked, or denied if the test is
14 administered and the test indicates the alcohol concentration of the
15 person's breath or blood meets or exceeds the limits set forth in RCW
16 46.61.502 (1) and (2), and (c) that his or her refusal to take the test
17 may be used in a criminal trial.

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

28 (4) Any person who is dead, unconscious, or who is otherwise in a
29 condition rendering him or her incapable of refusal, shall be deemed
30 not to have withdrawn the consent provided by subsection (1) of this
31 section and the test or tests may be administered, subject to the
32 provisions of RCW 46.61.506, and the person shall be deemed to have
33 received the warnings required under subsection (2) of this section.

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

1 (6) If, after arrest and after the other applicable conditions and
2 requirements of this section have been satisfied, a test or tests of
3 the person's blood or breath is administered and the test results
4 indicate that the alcohol concentration of the person's breath or blood
5 is 0.10 or more, or the person refuses to submit to a test, the
6 arresting officer or other law enforcement officer at whose direction
7 any test has been given, or the department if the arrest is the result
8 of a blood test, shall:

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

13 (b) Serve notice in writing on the person on behalf of the
14 department of his or her right to a hearing, specifying the steps he or
15 she must take to obtain a hearing. Within ten days after the notice
16 has been given, the person may, in writing, request a formal hearing as
17 provided by subsection (8) of this section. If such request is made by
18 mail it must be postmarked within ten days after the notice has been
19 given;

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

22 (d) Issue a temporary license to be effective twelve hours after
23 the time of arrest and valid for forty-five days from the date of
24 arrest or until the suspension, revocation, or denial of the person's
25 license, permit, or privilege to drive is sustained at a hearing
26 pursuant to subsection (8) of this section, whichever occurs first. No
27 temporary license is valid to any greater degree than the license or
28 permit that it replaces;

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

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

36 (ii) That after receipt of the warnings required by subsection (2)
37 of this section the person refused to submit to a test of his or her
38 blood or breath, or a test was administered and the results indicated

1 that the alcohol concentration of the person's breath or blood was 0.10
2 or more; and

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

5 (7) The department of licensing, upon the receipt of a sworn report
6 of the law enforcement officer that the officer had reasonable grounds
7 to believe the arrested person had been driving or was in actual
8 physical control of a motor vehicle within this state while under the
9 influence of intoxicating liquor and that (a) the person had refused to
10 submit to the test or tests upon the request of the law enforcement
11 officer after being informed that refusal would result in the
12 revocation of the person's privilege to drive, or (b) a test was
13 administered and the results indicated that the alcohol concentration
14 of the person's breath or blood was 0.10 or more, shall suspend,
15 revoke, or deny the person's license or permit to drive or any
16 nonresident operating privilege, such suspension, revocation, or denial
17 to be effective forty-five days from the date of arrest or when
18 sustained at a hearing pursuant to subsection (8) of this section,
19 whichever occurs first.

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

27 (8) Upon timely receipt of ((such)) a request for a formal hearing,
28 the department shall afford the person an opportunity for a hearing as
29 provided in RCW 46.20.329 and 46.20.332. The hearing shall be
30 conducted in the county of the arrest, except that all or part of the
31 hearing may, at the discretion of the department, be conducted by
32 telephone or other electronic means. For the purposes of this section,
33 the scope of ((such)) the hearing shall cover the issues of whether a
34 law enforcement officer had reasonable grounds to believe the person
35 had been driving or was in actual physical control of a motor vehicle
36 within this state while under the influence of intoxicating liquor,
37 whether the person was placed under arrest, and whether (a) the person
38 refused to submit to the test or tests upon request of the officer
39 after having been informed that such refusal would result in the

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

22 (+8)) (9) Failure of the person to request a hearing within the
23 time limit established by subsection (6) of this section, or failure to
24 attend or participate in such a hearing, constitutes a default and
25 results in the loss of that person's right to a hearing.

26 (10) If the suspension, revocation, or denial is sustained after
27 such a hearing, the person whose license, privilege, or permit is
28 suspended, revoked, or denied has the right to file a petition in the
29 superior court of the county of arrest to review the final order of
30 suspension, revocation, or denial by the department in the manner
31 provided in RCW 46.20.334. The filing of the appeal does not stay the
32 effective date of the suspension, revocation, or denial. A petition
33 filed under this subsection must include the petitioner's grounds for
34 requesting review. Upon granting petitioner's request for review, the
35 court shall review the department's final order of suspension,
36 revocation, or denial as expeditiously as possible. If judicial relief
37 is sought for a stay or other temporary remedy from the department's
38 action, the court shall not grant such relief unless the court finds
39 that:

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

3 (b) Without relief the petitioner will suffer irreparable injury;
4 and

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

8 ~~((+9+))~~ (11) When it has been finally determined under the
9 procedures of this section that a nonresident's privilege to operate a
10 motor vehicle in this state has been suspended, revoked, or denied the
11 department shall give information in writing of the action taken to the
12 motor vehicle administrator of the state of the person's residence and
13 of any state in which he or she has a license.

14 NEW SECTION. Sec. 6. A new section is added to chapter 46.20 RCW
15 to read as follows:

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

19 (a) In the case of a person who has refused a test or tests:

20 (i) For a first refusal within five years preceding the date of
21 refusal, revocation or denial for one year;

22 (ii) For a second or subsequent refusal within five years preceding
23 the date of refusal, revocation or denial for two years.

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

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

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

36 (iii) For a third or subsequent incident within five years,
37 revocation or denial for two years. Previous convictions under RCW
38 46.61.502, 46.61.504, 46.61.520, or 46.61.522 within the five-year

1 period preceding the current incident, that did not result in a
2 suspension, revocation, or denial under this subsection, shall be
3 considered previous incidents for purposes of this subsection.

4 (2) A diagnostic evaluation and treatment recommendation shall be
5 prepared by an alcoholism agency approved by the department of social
6 and health services or a qualified probation department approved by the
7 department of social and health services. A copy of the report shall
8 be forwarded to the department of licensing. The department shall not
9 grant or reinstate a person's privilege to drive that has been
10 suspended, revoked, or denied under subsection (1) of this section
11 until it has determined the person's eligibility for licensing based
12 upon the report provided by an approved alcoholism agency or probation
13 department and shall deny reinstatement until enrollment and
14 participation in an approved program has been established and the
15 person is otherwise qualified.

16 **Sec. 7.** RCW 46.20.311 and 1990 c 250 s 45 are each amended to read
17 as follows:

18 (1) The department shall not suspend a driver's license or
19 privilege to drive a motor vehicle on the public highways for a fixed
20 period of more than one year, except as permitted under RCW 46.20.342
21 or 46.61.515. Whenever the license or driving privilege of any person
22 is suspended by reason of a conviction, a finding that a traffic
23 infraction has been committed, pursuant to chapter 46.29 RCW, or
24 pursuant to RCW 46.20.291, the suspension shall remain in effect until
25 the person gives and thereafter maintains proof of financial
26 responsibility for the future as provided in chapter 46.29 RCW. The
27 department shall not issue to the person a new, duplicate, or renewal
28 license until the person pays a reissue fee of twenty dollars. If the
29 suspension is the result of a violation of RCW 46.61.502 or 46.61.504,
30 the reissue fee shall be (~~fifty~~) one hundred dollars.

31 (2) Any person whose license or privilege to drive a motor vehicle
32 on the public highways has been revoked, unless the revocation was for
33 a cause which has been removed, is not entitled to have the license or
34 privilege renewed or restored until: (a) After the expiration of one
35 year from the date the license or privilege to drive was revoked; (b)
36 after the expiration of the applicable revocation period provided by
37 RCW 46.61.515(3) (b) or (c); (c) after the expiration of two years for
38 persons convicted of vehicular homicide; (d) after the expiration of

1 one year in cases of revocation for the first refusal within five years
2 to submit to a chemical test under RCW 46.20.308; (e) after the
3 expiration of two years in cases of revocation for the second refusal
4 within five years to submit to a chemical test under RCW 46.20.308; or
5 (f) after the expiration of the applicable revocation period provided
6 by RCW 46.20.265. After the expiration of the appropriate period, the
7 person may make application for a new license as provided by law
8 together with a reissue fee in the amount of twenty dollars, but if the
9 revocation is the result of a violation of RCW 46.20.308, 46.61.502, or
10 46.61.504, the reissue fee shall be (~~fifty~~) one hundred dollars.
11 Except for a revocation under RCW 46.20.265, the department shall not
12 then issue a new license unless it is satisfied after investigation of
13 the driving ability of the person that it will be safe to grant the
14 privilege of driving a motor vehicle on the public highways, and until
15 the person gives and thereafter maintains proof of financial
16 responsibility for the future as provided in chapter 46.29 RCW. For a
17 revocation under RCW 46.20.265, the department shall not issue a new
18 license unless it is satisfied after investigation of the driving
19 ability of the person that it will be safe to grant that person the
20 privilege of driving a motor vehicle on the public highways.

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

32 **Sec. 8.** RCW 46.20.311 and 1993 c ... s 7 (section 7 of this act)
33 are each amended to read as follows:

34 (1) The department shall not suspend a driver's license or
35 privilege to drive a motor vehicle on the public highways for a fixed
36 period of more than one year, except as permitted under RCW 46.20.342
37 (~~or~~), 46.61.515, or section 6 of this act. Except for a suspension
38 under section 6(1)(b)(i) of this act, whenever the license or driving

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

15 (2) Any person whose license or privilege to drive a motor vehicle
16 on the public highways has been revoked, unless the revocation was for
17 a cause which has been removed, is not entitled to have the license or
18 privilege renewed or restored until: (a) After the expiration of one
19 year from the date the license or privilege to drive was revoked; (b)
20 after the expiration of the applicable revocation period provided by
21 RCW 46.61.515(3) (b) or (c); (c) after the expiration of two years for
22 persons convicted of vehicular homicide; (d) after the expiration of
23 (~~one year in cases of revocation for the first refusal within five~~
24 ~~years to submit to a chemical test under RCW 46.20.308; (e) after the~~
25 ~~expiration of two years in cases of revocation for the second refusal~~
26 ~~within five years to submit to a chemical test under RCW 46.20.308; or~~
27 ~~(f))~~) the applicable revocation period provided by section 6 of this
28 act; or (e) after the expiration of the applicable revocation period
29 provided by RCW 46.20.265. After the expiration of the appropriate
30 period, the person may make application for a new license as provided
31 by law together with a reissue fee in the amount of twenty dollars, but
32 if the revocation is the result of a violation of RCW 46.20.308,
33 46.61.502, or 46.61.504 or was imposed under RCW 46.20.308, the reissue
34 fee shall be one hundred dollars. Except for a revocation under RCW
35 46.20.265, the department shall not then issue a new license unless it
36 is satisfied after investigation of the driving ability of the person
37 that it will be safe to grant the privilege of driving a motor vehicle
38 on the public highways, and until the person gives and thereafter
39 maintains proof of financial responsibility for the future as provided

1 in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the
2 department shall not issue a new license unless it is satisfied after
3 investigation of the driving ability of the person that it will be safe
4 to grant that person the privilege of driving a motor vehicle on the
5 public highways.

6 (3) Whenever the driver's license of any person is suspended
7 pursuant to Article IV of the nonresident violators compact or RCW
8 46.23.020, the department shall not issue to the person any new or
9 renewal license until the person pays a reissue fee of twenty dollars.
10 If the suspension is the result of a violation of the laws of another
11 state, province, or other jurisdiction involving (a) the operation or
12 physical control of a motor vehicle upon the public highways while
13 under the influence of intoxicating liquor or drugs, or (b) the refusal
14 to submit to a chemical test or tests of the driver's breath or blood
15 alcohol content, the reissue fee shall be one hundred dollars.

16 **Sec. 9.** RCW 46.20.391 and 1985 c 407 s 5 are each amended to read
17 as follows:

18 (1) Any person licensed under this chapter whose driving privilege
19 has been suspended under section 6 (1)(b)(i) of this act or who is
20 convicted of an offense relating to motor vehicles for which suspension
21 or revocation of the driver's license is mandatory, other than
22 vehicular homicide or vehicular assault, may submit to the department
23 an application for an occupational driver's license. The department,
24 upon receipt of the prescribed fee and upon determining that the
25 petitioner is engaged in an occupation or trade that makes it essential
26 that the petitioner operate a motor vehicle, may issue an occupational
27 driver's license and may set definite restrictions as provided in RCW
28 46.20.394. No person may petition for, and the department shall not
29 issue, an occupational driver's license that is effective during the
30 first thirty days of any suspension or revocation imposed under RCW
31 46.61.515 or section 6 (1)(b)(i) of this act. A person aggrieved by
32 the decision of the department on the application for an occupational
33 driver's license may request a hearing as provided by rule of the
34 department.

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

37 (a) Within one year immediately preceding the present conviction or
38 administrative action, the applicant has not been convicted of any

1 offense relating to motor vehicles for which suspension or revocation
2 of a driver's license is mandatory; and

3 (b) Within five years immediately preceding the present conviction
4 or administrative action, the applicant has not been convicted of
5 driving or being in actual physical control of a motor vehicle while
6 under the influence of intoxicating liquor under RCW 46.61.502 or
7 46.61.504, of vehicular homicide under RCW 46.61.520, or of vehicular
8 assault under RCW 46.61.522, or had a license administratively
9 suspended or revoked under section 6 (1)(b)(i) of this act; and

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

12 (d) The applicant files satisfactory proof of financial
13 responsibility pursuant to chapter 46.29 RCW, unless the suspension was
14 imposed under section 6(1)(b)(i) of this act.

15 (3) The director shall cancel an occupational driver's license upon
16 receipt of notice that the holder thereof has had a driver's license
17 administratively suspended or revoked under RCW 46.20.308 or has been
18 convicted of operating a motor vehicle in violation of its
19 restrictions, or of an offense that pursuant to chapter 46.20 RCW would
20 warrant suspension or revocation of a regular driver's license. The
21 cancellation is effective as of the date of the conviction, and
22 continues with the same force and effect as any suspension or
23 revocation under this title.

24 NEW SECTION. Sec. 10. A new section is added to chapter 46.20 RCW
25 to read as follows:

26 (1) Any person licensed under this chapter or any nonresident
27 granted the privilege of driving a motor vehicle on the highways of
28 this state, whose driver's license or driving privilege has been
29 suspended or revoked, other than for vehicular homicide, vehicular
30 assault, or under section 6(1)(a) of this act, or for a physical or
31 mental disability that would affect that person's ability to operate a
32 motor vehicle with safety upon the highways, may submit to the
33 department an application for a provisional driver's license for
34 purposes of participation in an alcohol or drug abuse treatment program
35 approved by the department of social and health services. The
36 department, upon receipt of the fee prescribed by this section and upon
37 determining that the applicant is engaged in a treatment program
38 approved by the department of social and health services that makes it

1 essential that the applicant operate a motor vehicle, may issue a
2 provisional driver's license. No person may petition for, and the
3 department shall not issue, a provisional driver's license that is
4 effective during the first thirty days of any suspension or revocation
5 imposed under RCW 46.61.515 or section 6 of 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 6(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 6(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
31 under the same terms as the provisional driver's license. Any
32 violation of the restrictions constitutes a violation of RCW 46.20.342
33 and subjects the person to all procedures and penalties therefor.

34 (4) The department shall cancel a provisional driver's license upon
35 receipt of notice that the holder thereof has been convicted of
36 operating a motor vehicle in violation of its restrictions, or of an
37 offense that pursuant to this chapter would warrant suspension or
38 revocation of a regular driver's license, or upon the recommendation of
39 a treatment agency for nonparticipation in a treatment program. The

1 cancellation is effective as of the date of the conviction, or the date
2 a recommendation is accepted from a treatment agency, and continues
3 with the same force and effect as any suspension or revocation under
4 this title.

5 **Sec. 11.** RCW 46.52.130 and 1991 c 243 s 1 are each amended to read
6 as follows:

7 A certified abstract of the driving record shall be furnished only
8 to the individual named in the abstract, an employer, the insurance
9 carrier that has insurance in effect covering the employer or a
10 prospective employer, the insurance carrier that has insurance in
11 effect covering the named individual, the insurance carrier to which
12 the named individual has applied, or an alcohol/drug assessment or
13 treatment agency approved by the department of social and health
14 services, to which the named individual has applied or been assigned
15 for evaluation or treatment. City attorneys and county prosecuting
16 attorneys may provide the driving record to alcohol/drug assessment or
17 treatment agencies approved by the department of social and health
18 services to which the named individual has applied or been assigned for
19 evaluation or treatment. The director, upon proper request, shall
20 furnish a certified abstract covering the period of not more than the
21 last three years to insurance companies, and covering a period of not
22 more than the last five years to state approved alcohol/drug assessment
23 or treatment agencies. A certified abstract of the full driving record
24 maintained by the department shall be furnished to individuals and
25 employers or prospective employers. The abstract, whenever possible,
26 shall include an enumeration of motor vehicle accidents in which the
27 person was driving; the total number of vehicles involved; whether the
28 vehicles were legally parked or moving; whether the vehicles were
29 occupied at the time of the accident; any reported convictions,
30 forfeitures of bail, or findings that an infraction was committed based
31 upon a violation of any motor vehicle law; any charges for which the
32 driver has been granted entry into a deferred prosecution program, as
33 provided by chapter 10.05 RCW; and the status of the person's driving
34 privilege in this state. The enumeration shall include any reports of
35 failure to appear in response to a traffic citation or failure to
36 respond to a notice of infraction served upon the named individual by
37 an arresting officer.

1 The abstract provided to the insurance company shall exclude any
2 information except that related to the commission of misdemeanors or
3 felonies by the individual pertaining to law enforcement officers or
4 fire fighters as defined in RCW 41.26.030, or any officer of the
5 Washington state patrol, while driving official vehicles in the
6 performance of occupational duty.

7 The director shall collect for each abstract the sum of four
8 dollars and fifty cents which shall be deposited in the highway safety
9 fund.

10 Any insurance company or its agent receiving the certified abstract
11 shall use it exclusively for its own underwriting purposes and shall
12 not divulge any of the information contained in it to a third party.
13 No policy of insurance may be canceled, nonrenewed, denied, or have the
14 rate increased on the basis of such information unless the policyholder
15 was determined to be at fault. No insurance company or its agent for
16 underwriting purposes relating to the operation of commercial motor
17 vehicles may use any information contained in the abstract relative to
18 any person's operation of motor vehicles while not engaged in such
19 employment, nor may any insurance company or its agent for underwriting
20 purposes relating to the operation of noncommercial motor vehicles use
21 any information contained in the abstract relative to any person's
22 operation of commercial motor vehicles.

23 Any employer or prospective employer receiving the certified
24 abstract shall use it exclusively for his or her own purpose to
25 determine whether the licensee should be permitted to operate a
26 commercial vehicle or school bus upon the public highways of this state
27 and shall not divulge any information contained in it to a third party.

28 Any alcohol/drug assessment or treatment agency approved by the
29 department of social and health services receiving the certified
30 abstract shall use it exclusively for the purpose of assisting its
31 employees in making a determination as to what level of treatment, if
32 any, is appropriate. The agency, or any of its employees, shall not
33 divulge any information contained in the abstract to a third party.

34 Any violation of this section is a gross misdemeanor.

35 **Sec. 12.** RCW 46.61.515 and 1985 c 352 s 1 are each amended to read
36 as follows:

37 (1) Every person who is convicted of a violation of RCW 46.61.502
38 or 46.61.504 shall be punished by imprisonment for not less than

1 twenty-four consecutive hours nor more than one year, and by a fine of
2 not less than two hundred fifty dollars and not more than one thousand
3 dollars. Unless the judge finds the person to be indigent, two hundred
4 fifty dollars of the fine shall not be suspended or deferred. Twenty-
5 four consecutive hours of the jail sentence shall not be suspended or
6 deferred unless the judge finds that the imposition of the jail
7 sentence will pose a risk to the defendant's physical or mental well-
8 being. Whenever the mandatory jail sentence is suspended or deferred,
9 the judge must state, in writing, the reason for granting the
10 suspension or deferral and the facts upon which the suspension or
11 deferral is based. The court may impose conditions of probation that
12 may include nonrepetition, alcohol or drug treatment, supervised
13 probation, or other conditions that may be appropriate. The convicted
14 person shall, in addition, be required to complete a course in an
15 alcohol information school approved by the department of social and
16 health services or more intensive treatment in a program approved by
17 the department of social and health services, as determined by the
18 court. A diagnostic evaluation and treatment recommendation shall be
19 prepared under the direction of the court by an alcoholism agency
20 approved by the department of social and health services or a qualified
21 probation department approved by the department of social and health
22 services. A copy of the report shall be forwarded to the department of
23 licensing. Based on the diagnostic evaluation, the court shall
24 determine whether the convicted person shall be required to complete a
25 course in an alcohol information school approved by the department of
26 social and health services or more intensive treatment in a program
27 approved by the department of social and health services. Standards
28 for approval for alcohol treatment programs shall be prescribed by rule
29 under the administrative procedure act, chapter 34.05 RCW. The courts
30 shall periodically review the costs of alcohol information schools and
31 treatment programs within their jurisdictions.

32 (2) On a second or subsequent conviction for driving or being in
33 physical control of a motor vehicle while under the influence of
34 intoxicating liquor or drugs within a five-year period a person shall
35 be punished by imprisonment for not less than seven days nor more than
36 one year and by a fine of not less than five hundred dollars and not
37 more than two thousand dollars. District courts and courts organized
38 under chapter 35.20 RCW are authorized to impose such fine. Unless the
39 judge finds the person to be indigent, five hundred dollars of the fine

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

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

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

33 (a) On the first conviction under either offense, where there has
34 been no previous suspension or denial imposed under section 6(1)(b) of
35 this act for the incident upon which the conviction is based, or where
36 there has been no previous incident resulting in a suspension,
37 revocation, or denial under section 6(1)(b) of this act within the
38 five-year period preceding the current conviction, be suspended by the
39 department until the person reaches age nineteen or for ninety days,

1 whichever is longer. The department of licensing shall determine the
2 person's eligibility for licensing based upon the reports provided by
3 the designated alcoholism agency, drug treatment center, or probation
4 department and shall deny reinstatement until enrollment and
5 participation in an approved program has been established and the
6 person is otherwise qualified;

7 (b) On a second conviction under either offense within a five-year
8 period, where there has been no previous revocation or denial imposed
9 under section 6(1)(b) of this act for the incident upon which the
10 conviction is based, be revoked by the department for one year. A
11 previous incident resulting in a suspension, revocation, or denial
12 under section 6(1)(b) of this act within the five-year period preceding
13 the current conviction shall be considered a previous conviction for
14 purposes of this subsection. The department of licensing shall
15 determine the person's eligibility for licensing based upon the reports
16 provided by the designated alcoholism agency, drug treatment center, or
17 probation department and shall deny reinstatement until satisfactory
18 progress in an approved program has been established and the person is
19 otherwise qualified;

20 (c) On a third or subsequent conviction of driving or being in
21 physical control of a motor vehicle while under the influence of
22 intoxicating liquor or drugs, vehicular homicide, or vehicular assault,
23 or any combination thereof within a five-year period, where there has
24 been no previous revocation or denial imposed under section 6(1)(b) of
25 this act for the incident upon which the conviction is based, be
26 revoked by the department for two years. Previous incidents resulting
27 in suspension, revocation, or denial under section 6(1)(b) of this act
28 within the five-year period preceding the current conviction shall be
29 considered previous convictions for purposes of this subsection.

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

37 **Sec. 13.** RCW 46.68.060 and 1969 c 99 s 11 are each amended to read
38 as follows:

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

10 (2) The sum of ten dollars shall be paid from the highway safety
11 fund to law enforcement agencies for each reissue fee collected under
12 RCW 46.20.311 due to a suspension or revocation arising from an arrest
13 under RCW 46.61.502 or 46.61.504 as reimbursement for the required
14 administrative procedures.

15 NEW SECTION. **Sec. 14.** The traffic safety commission shall
16 undertake a study of the effectiveness of this act and shall report its
17 finding to the governor and the appropriate legislative committees
18 within thirty months of the effective date of this section.

19 NEW SECTION. **Sec. 15.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 16.** The department of licensing may adopt rules
24 necessary to carry out this act.

25 NEW SECTION. **Sec. 17.** This act is necessary for the immediate
26 preservation of the public peace, health, or safety, or support of the
27 state government and its existing public institutions, and shall take
28 effect July 1, 1993, except for section 7 of this act, which shall take
29 effect immediately. The director of licensing may immediately take
30 such steps as are necessary to ensure that all sections of this act are
31 implemented on their respective effective dates.

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