

2 SSB 5141 - H COMM AMD
3 By Committee on Law & Justice

4 ADOPTED AS AMENDED 4/7/95

5 Strike everything after the enacting clause and insert the
6 following:

7 **"PART I - IMPLIED CONSENT AND ADMINISTRATIVE REVOCATION**

8 **Sec. 1.** RCW 46.20.308 and 1994 c 275 s 13 are each amended to read
9 as follows:

10 (1)(a) Any person who operates a motor vehicle within this state is
11 deemed to have given consent, subject to the provisions of RCW
12 46.61.506, to a test or tests of his or her breath or blood for the
13 purpose of determining the ~~((alcoholic content of))~~ alcohol
14 concentration or presence of any drug in his or her breath or blood if
15 arrested for any offense where, at the time of the arrest, the
16 arresting officer has reasonable grounds to believe the person had been
17 driving or was in actual physical control of a motor vehicle while
18 under the influence of intoxicating liquor or any drug.

19 (b) A person under the age of twenty-one who drives or is in
20 physical control of a motor vehicle within this state is deemed to have
21 given consent, subject to the relevant portions of RCW 46.61.506, to be
22 detained long enough, and be transported if necessary, to take a test
23 or tests of that person's blood or breath for the purpose of
24 determining the alcohol concentration in his or her system if requested
25 or signaled to stop by a law enforcement officer pursuant to RCW
26 46.20.309 (as recodified by this act) where, at the time of the stop,
27 the officer has reasonable grounds to believe the person is under the
28 age of twenty-one and had been driving or was in actual physical
29 control of a motor vehicle while having alcohol in a concentration of
30 0.02 or more in his or her system.

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

1 physical control of a motor vehicle while having alcohol in a
2 concentration of 0.02 or more in his or her system and being under the
3 age of twenty-one. 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)) or where the person is being treated
7 (~~for a medical condition~~) in a hospital, clinic, doctor's office,
8 emergency medical vehicle, ambulance, or other similar facility in
9 which a breath testing instrument is not present or where the officer
10 has reasonable grounds to believe that the person is under the
11 influence of a drug, a blood test shall be administered by a qualified
12 person as provided in RCW 46.61.506(4). The officer shall inform the
13 person of his or her right to refuse the breath or blood test, and of
14 his or her right to have additional tests administered by any qualified
15 person of his or her choosing as provided in RCW 46.61.506. The
16 officer shall warn the driver that:

17 (a) His or her license, permit, or privilege to drive will be
18 revoked or denied if he or she refuses to submit to the test(~~(, and (b)~~
19 that)) and that a knowing refusal to submit to the test is a crime
20 punishable as a gross misdemeanor;

21 (b) His or her license, permit, or privilege to drive will be
22 suspended, revoked, denied, or placed in probationary status if the
23 test is administered and the test indicates the alcohol concentration
24 of the person's breath or blood is 0.10 or more, in the case of a
25 person age twenty-one or over, or 0.02 or more in the case of a person
26 under age twenty-one; and

27 (c) His or her refusal to take the test may be used in a criminal
28 trial.

29 (3) Except as provided in this section, the test administered shall
30 be of the breath only. If an individual is unconscious or is under
31 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
32 or vehicular assault as provided in RCW 46.61.522, or if an individual
33 is under arrest for the crime of driving while under the influence of
34 intoxicating liquor or drugs as provided in RCW 46.61.502 or is under
35 detention for driving with alcohol in his or her system as provided in
36 RCW 46.20.309 (as recodified by this act), which arrest or detention
37 results from an accident in which there has been serious bodily injury
38 to another person (~~has been injured and there is a reasonable~~
39 likelihood that such other person may die as a result of injuries

1 ~~sustained in the accident~~)), a breath or blood test may be administered
2 without the consent of the individual so arrested or detained.

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

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

15 (6) If, after arrest or detention and after the other applicable
16 conditions and requirements of this section have been satisfied, a test
17 or tests of the person's blood or breath is administered and the test
18 results indicate that the alcohol concentration of the person's breath
19 or blood is 0.10 or more if the person is age twenty-one or over, or is
20 0.02 or more if the person is under the age of twenty-one, or the
21 person refuses to submit to a test, the arresting officer or other law
22 enforcement officer at whose direction any test has been given, or the
23 department, where applicable, if the arrest or detention results in a
24 test of the person's blood, shall:

25 (a) Serve notice in writing on the person on behalf of the
26 department of its intention to suspend, revoke, deny, or place in
27 probationary status the person's license, permit, or privilege to drive
28 as required by subsection (7) of this section;

29 (b) Serve notice in writing on the person on behalf of the
30 department of his or her right to a hearing, specifying the steps he or
31 she must take to obtain a hearing. Within thirty days after the notice
32 has been given, the person may, in writing, request a formal hearing as
33 provided by subsection (8) of this section. If such request is made by
34 mail it must be postmarked within thirty days after the notice has been
35 given;

36 (c) Mark the person's Washington state driver's license or permit
37 to drive, if any, in a manner authorized by the department;

38 (d) Serve notice in writing that the marked license or permit, if
39 any, is a temporary license that is valid for sixty days from the date

1 of arrest or detention or from the date notice has been given in the
2 event notice is given by the department following a blood test, 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; and

8 (e) Immediately notify the department of the arrest or detention
9 and transmit to the department within seventy-two hours, except as
10 delayed as the result of a blood test, a sworn report or report under
11 a declaration authorized by RCW 9A.72.085 that states:

12 (i) That the officer had reasonable grounds to believe the arrested
13 or detained person had been driving or was in actual physical control
14 of a motor vehicle within this state while under the influence of
15 intoxicating liquor or drugs, or both, or was under the age of twenty-
16 one years and had been driving or was in actual physical control of a
17 motor vehicle while having an alcohol concentration of 0.02 or more;

18 (ii) That after receipt of the warnings required by subsection (2)
19 of this section the person refused to submit to a test of his or her
20 blood or breath, or a test was administered and the results indicated
21 that the alcohol concentration of the person's breath or blood was 0.10
22 or more if the person is age twenty-one or over, or was 0.02 or more if
23 the person is under the age of twenty-one; and

24 (iii) Any other information that the director may require by rule.

25 (7) The department of licensing, upon the receipt of a sworn report
26 (~~of the law enforcement officer that the officer had reasonable~~
27 grounds to believe the arrested person had been driving or was in
28 actual physical control of a motor vehicle within this state while
29 under the influence of intoxicating liquor and that the person had
30 refused to submit to the test or tests upon the request of the law
31 enforcement officer after being informed that refusal would result in
32 the revocation of the person's privilege to drive)) or report under a
33 declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this
34 section, shall suspend, revoke, deny, or place in probationary status
35 the person's license (~~(or)~~), permit, or privilege to drive or any
36 nonresident operating privilege, as provided in section 3 of this act,
37 such suspension, revocation, denial, or placement in probationary
38 status to be effective beginning sixty days from the date of arrest or
39 detention or from the date notice has been given in the event notice is

1 given by the department following a blood test, or when sustained at a
2 hearing pursuant to subsection (8) of this section, whichever occurs
3 first.

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

12 (8) Upon timely receipt of ((such)) a request ((and such fee)) for
13 a formal hearing, the department shall afford the person an opportunity
14 for a hearing ((as provided in)). Except as otherwise provided in this
15 section, the hearing is subject to and shall be scheduled and conducted
16 in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be
17 conducted in the county of the arrest or detention, except that all or
18 part of the hearing may, at the discretion of the department, be
19 conducted by telephone or other electronic means. The hearing shall be
20 held within sixty days following the arrest or detention or following
21 the date notice has been given in the event notice is given by the
22 department following a blood test, unless otherwise agreed to by the
23 department and the person, in which case the action by the department
24 shall be stayed, and any valid temporary license marked under
25 subsection (6)(c) of this section extended, if the person is otherwise
26 eligible for licensing. For the purposes of this section, the scope of
27 ((such)) the hearing shall cover the issues of whether a law
28 enforcement officer had reasonable grounds to believe the person had
29 been driving or was in actual physical control of a motor vehicle
30 within this state while under the influence of intoxicating liquor or
31 any drug or had been driving or was in actual physical control of a
32 motor vehicle within this state while having alcohol in his or her
33 system in a concentration of 0.02 or more and was under the age of
34 twenty-one, whether the person was placed under arrest, and (a) whether
35 the person refused to submit to the test or tests upon request of the
36 officer after having been informed that such refusal would result in
37 the revocation of the person's license, permit, or privilege to drive,
38 or (b) if a test or tests were administered, whether the applicable
39 requirements of this section were satisfied before the administration

1 of the test or tests, whether the person submitted to the test or
2 tests, or whether a test was administered without express consent as
3 permitted under this section, and whether the test or tests indicated
4 that the alcohol concentration of the person's breath or blood was 0.10
5 or more if the person was age twenty-one or over at the time of the
6 arrest, or was 0.02 or more if the person was under the age of twenty-
7 one at the time of the arrest or detention. The sworn report or report
8 under a declaration authorized by RCW 9A.72.085 submitted by a law
9 enforcement officer is prima facie evidence that the officer had
10 reasonable grounds to believe the person had been driving or was in
11 actual physical control of a motor vehicle within this state while
12 under the influence of intoxicating liquor or drugs, or both, or the
13 person had been driving or was in actual physical control of a motor
14 vehicle within this state while having alcohol in his or her system in
15 a concentration of 0.02 or more and was under the age of twenty-one and
16 that the officer complied with the requirements of this section.

17 A hearing officer shall conduct the hearing, may issue subpoenas
18 for the attendance of witnesses and the production of documents, and
19 shall administer oaths to witnesses. The hearing officer shall not
20 issue a subpoena for the attendance of a witness at the request of the
21 person unless the request is accompanied by the fee required by RCW
22 5.56.010 for a witness in district court. The sworn report or report
23 under a declaration authorized by RCW 9A.72.085 of the law enforcement
24 officer and any other evidence accompanying the report shall be
25 admissible without further evidentiary foundation and the
26 certifications authorized by the criminal rules for courts of limited
27 jurisdiction shall be admissible without further evidentiary
28 foundation. The person may be represented by counsel, may question
29 witnesses, may present evidence, and may testify. The department shall
30 order that the suspension, revocation, denial, or placement in
31 probationary status either be rescinded or sustained. ((Any decision
32 by the department revoking a person's driving privilege shall be stayed
33 and shall not take effect while a formal hearing is pending as provided
34 in this section or during the pendency of a subsequent appeal to
35 superior court so long as there is no conviction for a moving violation
36 or no finding that the person has committed a traffic infraction that
37 is a moving violation during pendency of the hearing and appeal.

38 (8))) (9) If the suspension, revocation, denial, or placement in
39 probationary status is sustained after such a hearing, the person whose

1 license, privilege, or permit is suspended, revoked, denied, or placed
2 in probationary status has the right to file a petition in the superior
3 court of the county of arrest or detention to review the final order of
4 revocation by the department in the same manner (~~provided in RCW~~
5 ~~46.20.334~~) as an appeal from a decision of a court of limited
6 jurisdiction. The appellant must pay the costs associated with
7 obtaining the record of the hearing before the hearing officer plus an
8 additional one hundred dollars to the department. The filing of the
9 appeal does not stay the effective date of the suspension, revocation,
10 denial, or placement in probationary status. A petition filed under
11 this subsection must include the petitioner's grounds for requesting
12 review. Upon granting petitioner's request for review, the court shall
13 review the department's final order of suspension, revocation, denial,
14 or placement in probationary status as expeditiously as possible. If
15 judicial relief is sought for a stay or other temporary remedy from the
16 department's action, the court shall not grant such relief unless the
17 court finds that the appellant is likely to prevail in the appeal and
18 that without a stay the appellant will suffer irreparable injury. If
19 the court stays the suspension, revocation, denial, or placement in
20 probationary status it may impose conditions on such stay.

21 (10) If a person whose driver's license, permit, or privilege to
22 drive has been or will be suspended, revoked, denied, or placed in
23 probationary status under subsection (7) of this section, other than as
24 a result of a breath test refusal, and who has not committed an offense
25 within the last five years for which he or she was granted a deferred
26 prosecution under chapter 10.05 RCW, petitions a court for a deferred
27 prosecution on criminal charges arising out of the arrest for which
28 action has been or will be taken under subsection (7) of this section,
29 the court may direct the department to stay any actual or proposed
30 suspension, revocation, denial, or placement in probationary status for
31 at least forty-five days but not more than ninety days. If the court
32 stays the suspension, revocation, denial, or placement in probationary
33 status, it may impose conditions on such stay. If the person is
34 otherwise eligible for licensing, the department shall issue a
35 temporary license, or extend any valid temporary license marked under
36 subsection (6) of this section, for the period of the stay. If a
37 deferred prosecution treatment plan is not recommended in the report
38 made under RCW 10.05.050, or if treatment is rejected by the court, or
39 if the person declines to accept an offered treatment plan, or if the

1 person violates any condition imposed by the court, then the court
2 shall immediately direct the department to cancel the stay and any
3 temporary marked license or extension of a temporary license issued
4 under this subsection.

5 A suspension, revocation, or denial imposed under this section,
6 other than as a result of a breath test refusal, shall be stayed if the
7 person is accepted for deferred prosecution as provided in chapter
8 10.05 RCW for the incident upon which the suspension, revocation, or
9 denial is based. If the deferred prosecution is terminated, the stay
10 shall be lifted and the suspension, revocation, or denial reinstated.
11 If the deferred prosecution is completed, the stay shall be lifted and
12 the suspension, revocation, or denial canceled.

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 **Sec. 2.** RCW 46.20.309 and 1994 c 275 s 10 are each amended to read
20 as follows:

21 ~~((1))~~ Notwithstanding any other provision of this title, a person
22 under the age of twenty-one may not drive, operate, or be in physical
23 control of a motor vehicle while having alcohol in his or her system in
24 a concentration of 0.02 or ~~((above))~~ more.

25 ~~((2) A person under the age of twenty one who drives or is in~~
26 ~~physical control of a motor vehicle within this state is deemed to have~~
27 ~~given consent, subject to the relevant portions of RCW 46.61.506, to be~~
28 ~~detained long enough, and be transported if necessary, to take a test~~
29 ~~or tests of that person's blood or breath for the purpose of~~
30 ~~determining the alcohol concentration in his or her system.~~

31 ~~(3) A test or tests may be administered at the direction of a law~~
32 ~~enforcement officer, who after stopping or detaining the driver, has~~
33 ~~reasonable grounds to believe that the driver was driving or in actual~~
34 ~~physical control of a motor vehicle while having alcohol in his or her~~
35 ~~system.~~

36 ~~(4) The law enforcement officer requesting the test or tests under~~
37 ~~subsection (2) of this section shall warn the person requested to~~

1 submit to the test that a refusal to submit will result in that
2 person's driver's license or driving privilege being revoked.

3 (5) If the person refuses testing, or submits to a test that
4 discloses an alcohol concentration of 0.02 or more, the law enforcement
5 officer shall:

6 (a) Serve the person notice in writing on behalf of the department
7 of licensing of its intention to suspend, revoke, or deny the person's
8 license, permit, or privilege to drive;

9 (b) Serve the person notice in writing on behalf of the department
10 of licensing of the person's right to a hearing, specifying the steps
11 required to obtain a hearing;

12 (c) Confiscate the person's Washington state license or permit to
13 drive, if any, and issue a temporary license to replace any confiscated
14 license or permit. The temporary license shall be valid for thirty
15 days from the date of the traffic stop or until the suspension or
16 revocation of the person's license or permit is sustained at a hearing
17 as provided by subsection (7) of this section, whichever occurs first.
18 No temporary license is valid to any greater degree than the license or
19 permit it replaces;

20 (d) Notify the department of licensing of the traffic stop, and
21 transmit to the department any confiscated license or permit and a
22 sworn report stating:

23 (i) That the officer had reasonable grounds to believe the person
24 was driving or in actual physical control of a motor vehicle within
25 this state with alcohol in his or her system;

26 (ii) That pursuant to this section a test of the person's alcohol
27 concentration was administered or that the person refused to be tested;

28 (iii) If administered, that the test indicated the person's alcohol
29 concentration was 0.02 or higher; and

30 (iv) Any other information that the department may require by rule.

31 (6) Upon receipt of the sworn report of a law enforcement officer
32 under subsection (5) of this section, the department shall suspend or
33 revoke the driver's license or driving privilege beginning thirty days
34 from the date of the traffic stop or beginning when the suspension,
35 revocation, or denial is sustained at a hearing as provided by
36 subsection (7) of this section. Within fifteen days after notice of a
37 suspension or revocation has been given, the person may, in writing,
38 request a formal hearing. If such a request is not made within the
39 prescribed time the right to a hearing is waived. Upon receipt of such

1 request, the department shall afford the person an opportunity for a
2 hearing as provided in RCW 46.20.329 and 46.20.332. The hearing shall
3 be conducted in the county of the arrest. For the purposes of this
4 section, the hearing shall cover the issues of whether a law
5 enforcement officer had reasonable grounds to believe the person had
6 been driving or was in actual physical control of a motor vehicle
7 within this state while having alcohol in his or her system, whether
8 the person refused to submit to the test or tests upon request of the
9 officer after having been informed that the refusal would result in the
10 revocation of the person's driver's license or driving privilege, and,
11 if the test or tests of the person's breath or blood was administered,
12 whether the results indicated an alcohol concentration of 0.02 or more.
13 The department shall order that the suspension or revocation of the
14 person's driver's license or driving privilege either be rescinded or
15 sustained. Any decision by the department suspending or revoking a
16 person's driver's license or driving privilege is stayed and does not
17 take effect while a formal hearing is pending under this section or
18 during the pendency of a subsequent appeal to superior court so long as
19 there is no conviction for a moving violation or no finding that the
20 person has committed a traffic infraction that is a moving violation
21 during the pendency of the hearing and appeal. If the suspension or
22 revocation of the person's driver's license or driving privilege is
23 sustained after the hearing, the person may file a petition in the
24 superior court of the county of arrest to review the final order of
25 suspension or revocation by the department in the manner provided in
26 RCW 46.20.334.

27 (7) The department shall suspend or revoke the driver's license or
28 driving privilege of a person as required by this section as follows:

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

30 (i) For a first refusal within five years, revocation for one year;

31 (ii) For a second or subsequent refusal within five years,
32 revocation or denial for two years.

33 (b) In the case of an incident where a person has submitted to a
34 test or tests indicating an alcohol concentration of 0.02 or more:

35 (i) For a first incident within five years, suspension for ninety
36 days;

37 (ii) For a second or subsequent incident within five years,
38 revocation for one year or until the person reaches age twenty-one
39 whichever occurs later.

1 ~~(8) For purposes of this section, "alcohol concentration" means (a)~~
2 ~~grams of alcohol per two hundred ten liters of a person's breath, or~~
3 ~~(b) the percent by weight of alcohol in a person's blood.)~~

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 46.20 RCW
5 to read as follows:

6 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
7 deny the arrested or detained person's license, permit, or privilege to
8 drive as follows:

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

10 (a) For a first refusal within five years, where there has not been
11 a previous incident within five years that resulted in administrative
12 action under this section, revocation or denial for one year;

13 (b) For a second or subsequent refusal within five years, or for a
14 first refusal where there has been one or more previous incidents
15 within five years that have resulted in administrative action under
16 this section, revocation or denial for two years or until the person
17 reaches age twenty-one, whichever is longer. A revocation imposed
18 under this subsection (1)(b) shall run consecutively to the period of
19 any suspension, revocation, or denial imposed pursuant to a criminal
20 conviction arising out of the same incident.

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

24 (a) For a first incident within five years, where there has not
25 been a previous incident within five years that resulted in
26 administrative action under this section, placement in probationary
27 status as provided in RCW 46.20.355;

28 (b) For a second or subsequent incident within five years,
29 revocation or denial for two years.

30 (3) In the case of an incident where a person under age twenty-one
31 has submitted to or been administered a test or tests indicating that
32 the alcohol concentration of the person's breath or blood was 0.02 or
33 more:

34 (a) For a first incident within five years, suspension or denial
35 for ninety days;

36 (b) For a second or subsequent incident within five years,
37 revocation or denial for one year or until the person reaches age
38 twenty-one, whichever is longer.

1 **Sec. 4.** RCW 46.20.355 and 1994 c 275 s 8 are each amended to read
2 as follows:

3 (1) ~~Upon ((notification of a conviction under RCW 46.61.502 or~~
4 ~~46.61.504 for which the issuance of a probationary driver's license is~~
5 ~~required)) placing a license, permit, or privilege to drive in~~
6 ~~probationary status pursuant to section 3(2)(a) of this act, or upon~~
7 ~~receipt of an abstract indicating a deferred prosecution has been~~
8 ~~granted under RCW 10.05.060, the department of licensing shall order~~
9 ~~the person to surrender ((his or her)) any Washington state driver's~~
10 ~~license that may be in his or her possession. The department shall~~
11 ~~revoke the license, permit, or privilege to drive of any person who~~
12 ~~fails to surrender it as required by this section for one year, unless~~
13 ~~the license has been previously surrendered to the department, a law~~
14 ~~enforcement officer, or a court, or the person has completed an~~
15 ~~affidavit of lost, stolen, destroyed, or previously surrendered~~
16 ~~license, such revocation to take effect thirty days after notice is~~
17 ~~given of the requirement for license surrender.~~

18 (2) ~~((Upon receipt of the surrendered license, and following the~~
19 ~~expiration of any period of license suspension or revocation, or~~
20 ~~following receipt of a sworn statement under RCW 46.20.365 that~~
21 ~~requires issuance of a probationary license, the department shall issue~~
22 ~~the person a probationary license if otherwise qualified. The~~
23 ~~probationary license shall be renewed on the same cycle as the person's~~
24 ~~regular license would have been renewed until five years after the date~~
25 ~~of its issuance.)) The department shall place a person's driving~~
26 ~~privilege in probationary status as required by RCW 10.05.060 or~~
27 ~~46.20.308 for a period of five years from the date the probationary~~
28 ~~status is required to go into effect.~~

29 (3) ~~Following receipt of an abstract indicating a deferred~~
30 ~~prosecution has been granted under RCW 10.05.060, or following receipt~~
31 ~~of a sworn report under RCW 46.20.308 that requires immediate placement~~
32 ~~in probationary status under section 3(2)(a) of this act, the~~
33 ~~department shall require the person to obtain a probationary license in~~
34 ~~order to operate a motor vehicle in the state of Washington, except as~~
35 ~~otherwise exempt under RCW 46.20.025. The department shall not issue~~
36 ~~the probationary license unless the person is otherwise qualified for~~
37 ~~licensing, and the person must renew the probationary license on the~~
38 ~~same cycle as the person's regular license would have been renewed~~

1 (ii) By a fine of not less than three hundred fifty dollars nor
2 more than five thousand dollars. Three hundred fifty dollars of the
3 fine may not be suspended or deferred unless the court finds the
4 offender to be indigent; and

5 (iii) By suspension of the offender's license or permit to drive,
6 or suspension of any nonresident privilege to drive, for a period of
7 ninety days. The court may suspend all or part of the ninety-day
8 period of suspension. The court shall notify the department of
9 licensing of the conviction and of any period of license, permit, or
10 privilege suspension and shall notify the department of the person's
11 completion of any such period of suspension; or

12 (b) In the case of a person whose alcohol concentration was at
13 least 0.15, or for whom by reason of the person's refusal to take a
14 test offered pursuant to RCW 46.20.308 there is no test result
15 indicating the person's alcohol concentration:

16 (i) By imprisonment for not less than two days nor more than one
17 year. Two consecutive days of the imprisonment may not be suspended or
18 deferred unless the court finds that the imposition of this mandatory
19 minimum sentence would impose a substantial risk to the offender's
20 physical or mental well-being. Whenever the mandatory minimum sentence
21 is suspended or deferred, the court shall state in writing the reason
22 for granting the suspension or deferral and the facts upon which the
23 suspension or deferral is based; and

24 (ii) By a fine of not less than five hundred dollars nor more than
25 five thousand dollars. Five hundred dollars of the fine may not be
26 suspended or deferred unless the court finds the offender to be
27 indigent; and

28 (iii) By suspension of the offender's license or permit to drive,
29 or suspension of any nonresident privilege to drive, for a period of
30 one hundred twenty days. The period of license, permit, or privilege
31 suspension may not be suspended. The court shall notify the department
32 of licensing of the conviction, and upon receiving notification of the
33 conviction the department shall suspend the offender's license, permit,
34 or privilege.

35 (2) A person who is convicted of a violation of RCW 46.61.502 or
36 46.61.504 and who has one prior offense within five years shall be
37 punished as follows:

38 (a) In the case of a person whose alcohol concentration was less
39 than 0.15, or for whom for reasons other than the person's refusal to

1 take a test offered pursuant to RCW 46.20.308 there is no test result
2 indicating the person's alcohol concentration:

3 (i) By imprisonment for not less than thirty days nor more than one
4 year. Thirty days of the imprisonment may not be suspended or deferred
5 unless the court finds that the imposition of this mandatory minimum
6 sentence would impose a substantial risk to the offender's physical or
7 mental well-being. Whenever the mandatory minimum sentence is
8 suspended or deferred, the court shall state in writing the reason for
9 granting the suspension or deferral and the facts upon which the
10 suspension or deferral is based; and

11 (ii) By a fine of not less than five hundred dollars nor more than
12 five thousand dollars. Five hundred dollars of the fine may not be
13 suspended or deferred unless the court finds the offender to be
14 indigent; and

15 (iii) By revocation of the offender's license or permit to drive,
16 or suspension of any nonresident privilege to drive, for a period of
17 one year. The period of license, permit, or privilege revocation may
18 not be suspended. The court shall notify the department of licensing
19 of the conviction, and upon receiving notification of the conviction
20 the department shall revoke the offender's license, permit, or
21 privilege; or

22 (b) In the case of a person whose alcohol concentration was at
23 least 0.15, or for whom by reason of the person's refusal to take a
24 test offered pursuant to RCW 46.20.308 there is no test result
25 indicating the person's alcohol concentration:

26 (i) By imprisonment for not less than forty-five days nor more than
27 one year. Forty-five days of the imprisonment may not be suspended or
28 deferred unless the court finds that the imposition of this mandatory
29 minimum sentence would impose a substantial risk to the offender's
30 physical or mental well-being. Whenever the mandatory minimum sentence
31 is suspended or deferred, the court shall state in writing the reason
32 for granting the suspension or deferral and the facts upon which the
33 suspension or deferral is based; and

34 (ii) By a fine of not less than seven hundred fifty dollars nor
35 more than five thousand dollars. Seven hundred fifty dollars of the
36 fine may not be suspended or deferred unless the court finds the
37 offender to be indigent; and

38 (iii) By revocation of the offender's license or permit to drive,
39 or suspension of any nonresident privilege to drive, for a period of

1 four hundred fifty days. The period of license, permit, or privilege
2 revocation may not be suspended. The court shall notify the department
3 of licensing of the conviction, and upon receiving notification of the
4 conviction the department shall revoke the offender's license, permit,
5 or privilege.

6 (3) A person who is convicted of a violation of RCW 46.61.502 or
7 46.61.504 and who has two or more prior offenses within five years
8 shall be punished as follows:

9 (a) In the case of a person whose alcohol concentration was less
10 than 0.15, or for whom for reasons other than the person's refusal to
11 take a test offered pursuant to RCW 46.20.308 there is no test result
12 indicating the person's alcohol concentration:

13 (i) By imprisonment for not less than ninety days nor more than one
14 year. Ninety days of the imprisonment may not be suspended or deferred
15 unless the court finds that the imposition of this mandatory minimum
16 sentence would impose a substantial risk to the offender's physical or
17 mental well-being. Whenever the mandatory minimum sentence is
18 suspended or deferred, the court shall state in writing the reason for
19 granting the suspension or deferral and the facts upon which the
20 suspension or deferral is based; and

21 (ii) By a fine of not less than one thousand dollars nor more than
22 five thousand dollars. One thousand dollars of the fine may not be
23 suspended or deferred unless the court finds the offender to be
24 indigent; and

25 (iii) By revocation of the offender's license or permit to drive,
26 or suspension of any nonresident privilege to drive, for a period of
27 two years. The period of license, permit, or privilege revocation may
28 not be suspended. The court shall notify the department of licensing
29 of the conviction, and upon receiving notification of the conviction
30 the department shall revoke the offender's license, permit, or
31 privilege; or

32 (b) In the case of a person whose alcohol concentration was at
33 least 0.15, or for whom by reason of the person's refusal to take a
34 test offered pursuant to RCW 46.20.308 there is no test result
35 indicating the person's alcohol concentration:

36 (i) By imprisonment for not less than one hundred twenty days nor
37 more than one year. One hundred twenty days of the imprisonment may
38 not be suspended or deferred unless the court finds that the imposition
39 of this mandatory minimum sentence would impose a substantial risk to

1 the offender's physical or mental well-being. Whenever the mandatory
2 minimum sentence is suspended or deferred, the court shall state in
3 writing the reason for granting the suspension or deferral and the
4 facts upon which the suspension or deferral is based; and

5 (ii) By a fine of not less than one thousand five hundred dollars
6 nor more than five thousand dollars. One thousand five hundred dollars
7 of the fine may not be suspended or deferred unless the court finds the
8 offender to be indigent; and

9 (iii) By revocation of the offender's license or permit to drive,
10 or suspension of any nonresident privilege to drive, for a period of
11 three years. The period of license, permit, or privilege revocation
12 may not be suspended. The court shall notify the department of
13 licensing of the conviction, and upon receiving notification of the
14 conviction the department shall revoke the offender's license, permit,
15 or privilege.

16 (4) In exercising its discretion in setting penalties within the
17 limits allowed by this section, the court shall particularly consider
18 whether the person's driving at the time of the offense was responsible
19 for injury or damage to another or another's property.

20 (5) An offender punishable under this section is subject to the
21 alcohol assessment and treatment provisions of RCW 46.61.5056.

22 (6)(a) In addition to any nonsuspendable and nondeferrable jail
23 sentence required by this section, whenever the court imposes less than
24 one year in jail, the court shall also suspend but shall not defer a
25 period of confinement for a period not exceeding two years. The court
26 shall impose conditions of probation that include: (i) Not driving a
27 motor vehicle within this state without a valid license to drive and
28 proof of financial responsibility for the future; (ii) not driving a
29 motor vehicle within this state while having an alcohol concentration
30 of 0.08 or more within two hours after driving; and (iii) not refusing
31 to submit to a test of his or her breath or blood to determine alcohol
32 concentration upon request of a law enforcement officer who has
33 reasonable grounds to believe the person was driving or was in actual
34 physical control of a motor vehicle within this state while under the
35 influence of intoxicating liquor. The court may impose conditions of
36 probation that include nonrepetition, alcohol or drug treatment,
37 supervised probation, or other conditions that may be appropriate. The
38 sentence may be imposed in whole or in part upon violation of a
39 condition of probation during the suspension period.

1 (b) For each violation of mandatory conditions of probation under
2 (a) (i) and (ii) or (a) (i) and (iii) of this subsection, the court
3 shall order the convicted person to be confined for thirty days, which
4 shall not be suspended or deferred.

5 (c) For each incident involving a violation of a mandatory
6 condition of probation imposed under this subsection, the license,
7 permit, or privilege to drive of the person shall be suspended by the
8 court for thirty days or, if such license, permit, or privilege to
9 drive already is suspended, revoked, or denied at the time the finding
10 of probation violation is made, the suspension, revocation, or denial
11 then in effect shall be extended by thirty days. The court shall
12 notify the department of any suspension, revocation, or denial or any
13 extension of a suspension, revocation, or denial imposed under this
14 subsection.

15 (7)(a) A "prior offense" means any of the following:

16 (i) A conviction for a violation of RCW 46.61.502 or an equivalent
17 local ordinance;

18 (ii) A conviction for a violation of RCW 46.61.504 or an equivalent
19 local ordinance;

20 (iii) A conviction for a violation of RCW 46.61.520 committed while
21 under the influence of intoxicating liquor or any drug;

22 (iv) A conviction for a violation of RCW 46.61.522 committed while
23 under the influence of intoxicating liquor or any drug;

24 (v) An out-of-state conviction for a violation that would have been
25 a violation of (a)(i), (ii), (iii), or (iv) of this subsection if
26 committed in this state; or

27 (vi) A deferred prosecution under chapter 10.05 RCW granted in a
28 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
29 equivalent local ordinance.

30 (b) "Within five years" means that the arrest for a prior offense
31 occurred within five years of the arrest for the current offense.

32 **Sec. 6.** RCW 46.61.5058 and 1994 c 139 s 1 are each amended to read
33 as follows:

34 (1) Upon the arrest of a person or upon the filing of a complaint,
35 citation, or information in a court of competent jurisdiction, based
36 upon probable cause to believe that a person has violated RCW 46.61.502
37 or 46.61.504 or any similar municipal ordinance, if such person has a
38 (~~previous conviction for violation of either RCW 46.61.502 or~~

1 ~~46.61.504 or other similar municipal ordinance, and where the offense~~
2 ~~occurs within a five year period of the previous conviction))~~ prior
3 offense within five years as defined in section 5 of this act, and
4 where the person has been provided written notice that any transfer,
5 sale, or encumbrance of such person's interest in the vehicle over
6 which that person was actually driving or had physical control when the
7 violation occurred, is unlawful pending either acquittal, dismissal,
8 sixty days after conviction, or other termination of the charge, such
9 person shall be prohibited from encumbering, selling, or transferring
10 his or her interest in such vehicle, except as otherwise provided in
11 (a), (b), and (c) of this subsection, until either acquittal,
12 dismissal, sixty days after conviction, or other termination of the
13 charge. The prohibition against transfer of title shall not be stayed
14 pending the determination of an appeal from the conviction.

15 (a) A vehicle encumbered by a bona fide security interest may be
16 transferred to the secured party or to a person designated by the
17 secured party;

18 (b) A leased or rented vehicle may be transferred to the lessor,
19 rental agency, or to a person designated by the lessor or rental
20 agency; and

21 (c) A vehicle may be transferred to a third party or a vehicle
22 dealer who is a bona fide purchaser or may be subject to a bona fide
23 security interest in the vehicle unless it is established that (i) in
24 the case of a purchase by a third party or vehicle dealer, such party
25 or dealer had actual notice that the vehicle was subject to the
26 prohibition prior to the purchase, or (ii) in the case of a security
27 interest, the holder of the security interest had actual notice that
28 the vehicle was subject to the prohibition prior to the encumbrance of
29 title.

30 (2) On ~~((a second or subsequent))~~ conviction for a violation of
31 either RCW 46.61.502 or 46.61.504 or any similar municipal ordinance
32 where ~~((such offense was committed within a five year period of the~~
33 ~~previous conviction))~~ the person convicted has a prior offense within
34 five years as defined in section 5 of this act, the motor vehicle the
35 person was driving or over which the person had actual physical control
36 at the time of the offense, if the person has a financial interest in
37 the vehicle, is subject to seizure and forfeiture pursuant to this
38 section.

1 (3) A vehicle subject to forfeiture under this chapter may be
2 seized by a law enforcement officer of this state upon process issued
3 by a court of competent jurisdiction. Seizure of a vehicle may be made
4 without process if the vehicle subject to seizure has been the subject
5 of a prior judgment in favor of the state in a forfeiture proceeding
6 based upon this section.

7 (4) Seizure under subsection (3) of this section automatically
8 commences proceedings for forfeiture. The law enforcement agency under
9 whose authority the seizure was made shall cause notice of the seizure
10 and intended forfeiture of the seized vehicle to be served within
11 fifteen days after the seizure on the owner of the vehicle seized, on
12 the person in charge of the vehicle, and on any person having a known
13 right or interest in the vehicle, including a community property
14 interest. The notice of seizure may be served by any method authorized
15 by law or court rule, including but not limited to service by certified
16 mail with return receipt requested. Service by mail is complete upon
17 mailing within the fifteen-day period after the seizure. Notice of
18 seizure in the case of property subject to a security interest that has
19 been perfected on a certificate of title shall be made by service upon
20 the secured party or the secured party's assignee at the address shown
21 on the financing statement or the certificate of title.

22 (5) If no person notifies the seizing law enforcement agency in
23 writing of the person's claim of ownership or right to possession of
24 the seized vehicle within forty-five days of the seizure, the vehicle
25 is deemed forfeited.

26 (6) If a person notifies the seizing law enforcement agency in
27 writing of the person's claim of ownership or right to possession of
28 the seized vehicle within forty-five days of the seizure, the law
29 enforcement agency shall give the person or persons a reasonable
30 opportunity to be heard as to the claim or right. The hearing shall be
31 before the chief law enforcement officer of the seizing agency or the
32 chief law enforcement officer's designee, except where the seizing
33 agency is a state agency as defined in RCW 34.12.020, the hearing shall
34 be before the chief law enforcement officer of the seizing agency or an
35 administrative law judge appointed under chapter 34.12 RCW, except that
36 any person asserting a claim or right may remove the matter to a court
37 of competent jurisdiction. Removal may only be accomplished according
38 to the rules of civil procedure. The person seeking removal of the
39 matter must serve process against the state, county, political

1 subdivision, or municipality that operates the seizing agency, and any
2 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,
3 within forty-five days after the person seeking removal has notified
4 the seizing law enforcement agency of the person's claim of ownership
5 or right to possession. The court to which the matter is to be removed
6 shall be the district court when the aggregate value of the vehicle is
7 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
8 before the seizing agency and any appeal therefrom shall be under Title
9 34 RCW. In a court hearing between two or more claimants to the
10 vehicle involved, the prevailing party shall be entitled to a judgment
11 for costs and reasonable attorneys' fees. The burden of producing
12 evidence shall be upon the person claiming to be the legal owner or the
13 person claiming to have the lawful right to possession of the vehicle.
14 The seizing law enforcement agency shall promptly return the vehicle to
15 the claimant upon a determination by the administrative law judge or
16 court that the claimant is the present legal owner under Title 46 RCW
17 or is lawfully entitled to possession of the vehicle.

18 (7) When a vehicle is forfeited under this chapter the seizing law
19 enforcement agency may sell the vehicle, retain it for official use, or
20 upon application by a law enforcement agency of this state release the
21 vehicle to that agency for the exclusive use of enforcing this title;
22 provided, however, that the agency shall first satisfy any bona fide
23 security interest to which the vehicle is subject under subsection (1)
24 (a) or (c) of this section.

25 (8) When a vehicle is forfeited, the seizing agency shall keep a
26 record indicating the identity of the prior owner, if known, a
27 description of the vehicle, the disposition of the vehicle, the value
28 of the vehicle at the time of seizure, and the amount of proceeds
29 realized from disposition of the vehicle.

30 (9) Each seizing agency shall retain records of forfeited vehicles
31 for at least seven years.

32 (10) Each seizing agency shall file a report including a copy of
33 the records of forfeited vehicles with the state treasurer each
34 calendar quarter.

35 (11) The quarterly report need not include a record of a forfeited
36 vehicle that is still being held for use as evidence during the
37 investigation or prosecution of a case or during the appeal from a
38 conviction.

1 (12) By January 31st of each year, each seizing agency shall remit
2 to the state treasurer an amount equal to ten percent of the net
3 proceeds of vehicles forfeited during the preceding calendar year.
4 Money remitted shall be deposited in the public safety and education
5 account.

6 (13) The net proceeds of a forfeited vehicle is the value of the
7 forfeitable interest in the vehicle after deducting the cost of
8 satisfying a bona fide security interest to which the vehicle is
9 subject at the time of seizure; and in the case of a sold vehicle,
10 after deducting the cost of sale, including reasonable fees or
11 commissions paid to independent selling agents.

12 (14) The value of a sold forfeited vehicle is the sale price. The
13 value of a retained forfeited vehicle is the fair market value of the
14 vehicle at the time of seizure, determined when possible by reference
15 to an applicable commonly used index, such as the index used by the
16 department of licensing. A seizing agency may, but need not, use an
17 independent qualified appraiser to determine the value of retained
18 vehicles. If an appraiser is used, the value of the vehicle appraised
19 is net of the cost of the appraisal.

20

PART III - TECHNICAL AMENDMENTS

21 **Sec. 7.** RCW 3.62.090 and 1994 c 275 s 34 are each amended to read
22 as follows:

23 (1) There shall be assessed and collected in addition to any fines,
24 forfeitures, or penalties assessed, other than for parking infractions,
25 by all courts organized under Title 3 or 35 RCW a public safety and
26 education assessment equal to sixty percent of such fines, forfeitures,
27 or penalties, which shall be remitted as provided in chapters 3.46,
28 3.50, 3.62, and 35.20 RCW. The assessment required by this section
29 shall not be suspended or waived by the court.

30 (2) There shall be assessed and collected in addition to any fines,
31 forfeitures, or penalties assessed, other than for parking infractions
32 and for fines levied under ((RCW 46.61.5051, 46.61.5052, and
33 46.61.5053)) section 5 of this act, and in addition to the public
34 safety and education assessment required under subsection (1) of this
35 section, by all courts organized under Title 3 or 35 RCW, an additional
36 public safety and education assessment equal to fifty percent of the
37 public safety and education assessment required under subsection (1) of

1 this section, which shall be remitted to the state treasurer and
2 deposited as provided in RCW 43.08.250. The additional assessment
3 required by this subsection shall not be suspended or waived by the
4 court.

5 **Sec. 8.** RCW 35.21.165 and 1994 c 275 s 36 are each amended to read
6 as follows:

7 Except as limited by the maximum penalties authorized by law, no
8 city or town may establish a penalty for an act that constitutes the
9 crime of driving while under the influence of intoxicating liquor or
10 any drug, as provided in RCW 46.61.502, or the crime of being in actual
11 physical control of a motor vehicle while under the influence of
12 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is
13 less than the penalties prescribed for those crimes in ((RCW
14 ~~46.61.5051, 46.61.5052, and 46.61.5053~~)) section 5 of this act.

15 **Sec. 9.** RCW 36.32.127 and 1994 c 275 s 37 are each amended to read
16 as follows:

17 No county may establish a penalty for an act that constitutes the
18 crime of driving while under the influence of intoxicating liquor or
19 any drug, as provided for in RCW 46.61.502, or the crime of being in
20 actual physical control of a motor vehicle while under the influence of
21 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is
22 less than the penalties prescribed for those crimes in ((RCW
23 ~~46.61.5051, 46.61.5052, and 46.61.5053~~)) section 5 of this act.

24 **Sec. 10.** RCW 46.04.480 and 1994 c 275 s 38 are each amended to
25 read as follows:

26 "Revoke," in all its forms, means the invalidation for a period of
27 one calendar year and thereafter until reissue: PROVIDED, That under
28 the provisions of RCW 46.20.285, 46.20.311, 46.20.265, ((~~46.61.5051,~~
29 ~~46.61.5052, or 46.61.5053~~)) or section 5 of this act, and chapter 46.65
30 RCW the invalidation may last for a period other than one calendar
31 year.

32 **Sec. 11.** RCW 46.20.311 and 1994 c 275 s 27 are each amended to
33 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

1 period of more than one year, except as specifically permitted under
2 RCW 46.20.342 or other provision of law. Except for a suspension under
3 RCW 46.20.289 and 46.20.291(5), whenever the license or driving
4 privilege of any person is suspended by reason of a conviction, a
5 finding that a traffic infraction has been committed, pursuant to
6 chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the
7 suspension shall remain in effect until the person gives and thereafter
8 maintains proof of financial responsibility for the future as provided
9 in chapter 46.29 RCW. If the suspension is the result of a violation
10 of RCW 46.61.502 or 46.61.504, the department shall determine the
11 person's eligibility for licensing based upon the reports provided by
12 the alcoholism agency or probation department designated under RCW
13 46.61.5056 and shall deny reinstatement until enrollment and
14 participation in an approved program has been established and the
15 person is otherwise qualified. The department shall not issue to the
16 person a new, duplicate, or renewal license until the person pays a
17 reissue fee of twenty dollars. If the suspension is the result of a
18 violation of RCW 46.61.502 or 46.61.504, or is the result of
19 administrative action under RCW 46.20.308, the reissue fee shall be
20 fifty dollars.

21 (2) Any person whose license or privilege to drive a motor vehicle
22 on the public highways has been revoked, unless the revocation was for
23 a cause which has been removed, is not entitled to have the license or
24 privilege renewed or restored until: (a) After the expiration of one
25 year from the date the license or privilege to drive was revoked; (b)
26 after the expiration of the applicable revocation period provided by
27 ~~((RCW 46.20.308 or 46.61.5052, 46.61.5053, or 46.20.365))~~ section 3 or
28 5 of this act; (c) after the expiration of two years for persons
29 convicted of vehicular homicide; or (d) after the expiration of the
30 applicable revocation period provided by RCW 46.20.265. After the
31 expiration of the appropriate period, the person may make application
32 for a new license as provided by law together with a reissue fee in the
33 amount of twenty dollars, but if the revocation is the result of a
34 violation of RCW 46.20.308, 46.61.502, or 46.61.504 ~~((or is the result~~
35 ~~of administrative action under RCW 46.20.365))~~, the reissue fee shall
36 be fifty dollars. If the revocation is the result of a violation of
37 RCW 46.61.502 or 46.61.504, the department shall determine the person's
38 eligibility for licensing based upon the reports provided by the
39 alcoholism agency or probation department designated under RCW

1 46.61.5056 and shall deny reissuance of a license, permit, or privilege
2 to drive until enrollment and participation in an approved program has
3 been established and the person is otherwise qualified. Except for a
4 revocation under RCW 46.20.265, the department shall not then issue a
5 new license unless it is satisfied after investigation of the driving
6 ability of the person that it will be safe to grant the privilege of
7 driving a motor vehicle on the public highways, and until the person
8 gives and thereafter maintains proof of financial responsibility for
9 the future as provided in chapter 46.29 RCW. For a revocation under
10 RCW 46.20.265, the department shall not issue a new license unless it
11 is satisfied after investigation of the driving ability of the person
12 that it will be safe to grant that person the privilege of driving a
13 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 or 46.20.289 or 46.20.291(5), the department shall not issue
17 to the person any new or renewal license until the person pays a
18 reissue fee of twenty dollars. If the suspension is the result of a
19 violation of the laws of this or any other state, province, or other
20 jurisdiction involving (a) the operation or physical control of a motor
21 vehicle upon the public highways while under the influence of
22 intoxicating liquor or drugs, or (b) the refusal to submit to a
23 chemical test of the driver's blood alcohol content, the reissue fee
24 shall be fifty dollars.

25 **Sec. 12.** RCW 46.20.391 and 1994 c 275 s 29 are each amended to
26 read as follows:

27 (1) Any person licensed under this chapter who is convicted of an
28 offense relating to motor vehicles for which suspension or revocation
29 of the driver's license is mandatory, other than vehicular homicide or
30 vehicular assault, may submit to the department an application for an
31 occupational driver's license. The department, upon receipt of the
32 prescribed fee and upon determining that the petitioner is engaged in
33 an occupation or trade that makes it essential that the petitioner
34 operate a motor vehicle, may issue an occupational driver's license and
35 may set definite restrictions as provided in RCW 46.20.394. No person
36 may petition for, and the department shall not issue, an occupational
37 driver's license that is effective during the first thirty days of any
38 suspension or revocation imposed for a violation of RCW 46.61.502 or

1 46.61.504. (~~(No person may petition for, and the department shall not~~
2 ~~issue, an occupational driver's license if the person is ineligible for~~
3 ~~such a license under RCW 46.61.5052 or 46.61.5053.)~~) A person
4 aggrieved by the decision of the department on the application for an
5 occupational driver's license may request a hearing as provided by rule
6 of the department.

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

9 (a) Within one year immediately preceding the date of the offense
10 that gave rise to the present conviction, the applicant has not
11 committed (~~(of)~~) any (~~(committed any)~~) offense relating to motor
12 vehicles for which suspension or revocation of a driver's license is
13 mandatory; and

14 (b) Within five years immediately preceding the date of the offense
15 that gave rise to the present conviction, the applicant has not
16 committed any of the following offenses: (i) Driving or being in
17 actual physical control of a motor vehicle while under the influence of
18 intoxicating liquor; (ii) vehicular homicide under RCW 46.61.520; or
19 (iii) vehicular assault under RCW 46.61.522; and

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

22 (d) The applicant files satisfactory proof of financial
23 responsibility pursuant to chapter 46.29 RCW.

24 (3) The director shall cancel an occupational driver's license upon
25 receipt of notice that the holder thereof has been convicted of
26 operating a motor vehicle in violation of its restrictions, or of an
27 offense that pursuant to chapter 46.20 RCW would warrant suspension or
28 revocation of a regular driver's license. The cancellation is
29 effective as of the date of the conviction, and continues with the same
30 force and effect as any suspension or revocation under this title.

31 **Sec. 13.** RCW 46.61.5054 and 1994 c 275 s 7 are each amended to
32 read as follows:

33 (1)(a) In addition to penalties set forth in RCW 46.61.5051 through
34 46.61.5053 until September 1, 1995, and section 5 of this act
35 thereafter, a one hundred twenty-five dollar fee shall be assessed to
36 a person who is either convicted, sentenced to a lesser charge, or
37 given deferred prosecution, as a result of an arrest for violating RCW
38 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for the

1 purpose of funding the Washington state toxicology laboratory and the
2 Washington state patrol breath test program.

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

6 (c) When a minor has been adjudicated a juvenile offender for an
7 offense which, if committed by an adult, would constitute a violation
8 of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall
9 assess the one hundred twenty-five dollar fee under (a) of this
10 subsection. Upon a verified petition by a minor assessed the fee, the
11 court may suspend payment of all or part of the fee if it finds that
12 the minor does not have the ability to pay the fee.

13 (2) The fee assessed under subsection (1) of this section shall be
14 collected by the clerk of the court and distributed as follows:

15 (a) Forty percent shall be subject to distribution under RCW
16 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

17 (b) If the case involves a blood test by the state toxicology
18 laboratory, the remainder of the fee shall be forwarded to the state
19 treasurer for deposit in the death investigations account to be used
20 solely for funding the state toxicology laboratory blood testing
21 program.

22 (c) Otherwise, the remainder of the fee shall be forwarded to the
23 state treasurer for deposit in the state patrol highway account to be
24 used solely for funding the Washington state patrol breath test
25 program.

26 (3) This section applies to any offense committed on or after July
27 1, 1993.

28 **Sec. 14.** RCW 46.61.5056 and 1994 c 275 s 9 are each amended to
29 read as follows:

30 (1) A person subject to alcohol assessment and treatment under
31 (~~RCW 46.61.5051, 46.61.5052, or 46.61.5053~~) section 5 of this act
32 shall be required by the court to complete a course in an alcohol
33 information school approved by the department of social and health
34 services or to complete more intensive treatment in a program approved
35 by the department of social and health services, as determined by the
36 court. The court shall notify the department of licensing whenever it
37 orders a person to complete a course or treatment program under this
38 section.

1 (2) A diagnostic evaluation and treatment recommendation shall be
2 prepared under the direction of the court by an alcoholism agency
3 approved by the department of social and health services or a qualified
4 probation department approved by the department of social and health
5 services. A copy of the report shall be forwarded to the department of
6 licensing. Based on the diagnostic evaluation, the court shall
7 determine whether the person shall be required to complete a course in
8 an alcohol information school approved by the department of social and
9 health services or more intensive treatment in a program approved by
10 the department of social and health services.

11 (3) Standards for approval for alcohol treatment programs shall be
12 prescribed by the department of social and health services. The
13 department of social and health services shall periodically review the
14 costs of alcohol information schools and treatment programs.

15 (4) Any agency that provides treatment ordered under ((RCW
16 46.61.5051, 46.61.5052, or 46.61.5053)) section 5 of this act, shall
17 immediately report to the appropriate probation department where
18 applicable, otherwise to the court, and to the department of licensing
19 any noncompliance by a person with the conditions of his or her ordered
20 treatment. The court shall notify the department of licensing and the
21 department of social and health services of any failure by an agency to
22 so report noncompliance. Any agency with knowledge of noncompliance
23 that fails to so report shall be fined two hundred fifty dollars by the
24 department of social and health services. Upon three such failures by
25 an agency within one year, the department of social and health services
26 shall revoke the agency's approval under this section.

27 (5) The department of licensing and the department of social and
28 health services may adopt such rules as are necessary to carry out this
29 section.

30 **Sec. 15.** RCW 46.61.5151 and 1994 c 275 s 39 are each amended to
31 read as follows:

32 A sentencing court may allow persons convicted of violating RCW
33 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in
34 ((RCW 46.61.5051, 46.61.5052, or 46.61.5053)) section 5 of this act in
35 nonconsecutive or intermittent time periods. However, any mandatory
36 minimum sentence under ((RCW 46.61.5051, 46.61.5052, or 46.61.5053))
37 section 5 of this act shall be served consecutively unless suspended or
38 deferred as otherwise provided by law.

1 **Sec. 16.** RCW 46.63.020 and 1994 c 275 s 33 and 1994 c 141 s 2 are
2 each reenacted and amended to read as follows:

3 Failure to perform any act required or the performance of any act
4 prohibited by this title or an equivalent administrative regulation or
5 local law, ordinance, regulation, or resolution relating to traffic
6 including parking, standing, stopping, and pedestrian offenses, is
7 designated as a traffic infraction and may not be classified as a
8 criminal offense, except for an offense contained in the following
9 provisions of this title or a violation of an equivalent administrative
10 regulation or local law, ordinance, regulation, or resolution:

11 (1) RCW 46.09.120(2) relating to the operation of a nonhighway
12 vehicle while under the influence of intoxicating liquor or a
13 controlled substance;

14 (2) RCW 46.09.130 relating to operation of nonhighway vehicles;

15 (3) RCW 46.10.090(2) relating to the operation of a snowmobile
16 while under the influence of intoxicating liquor or narcotics or
17 habit-forming drugs or in a manner endangering the person of another;

18 (4) RCW 46.10.130 relating to the operation of snowmobiles;

19 (5) Chapter 46.12 RCW relating to certificates of ownership and
20 registration;

21 (6) RCW 46.16.010 relating to initial registration of motor
22 vehicles;

23 (7) RCW 46.16.011 relating to permitting unauthorized persons to
24 drive;

25 (8) RCW 46.16.160 relating to vehicle trip permits;

26 (9) RCW 46.16.381 (6) or (9) relating to unauthorized use or
27 acquisition of a special placard or license plate for disabled persons'
28 parking;

29 (10) RCW 46.20.021 relating to driving without a valid driver's
30 license;

31 (11) RCW 46.20.336 relating to the unlawful possession and use of
32 a driver's license;

33 (12) RCW 46.20.342 relating to driving with a suspended or revoked
34 license or status;

35 (13) RCW 46.20.410 relating to the violation of restrictions of an
36 occupational driver's license;

37 (14) RCW 46.20.420 relating to the operation of a motor vehicle
38 with a suspended or revoked license;

1 (15) RCW 46.20.750 relating to assisting another person to start a
2 vehicle equipped with an ignition interlock device;
3 (16) RCW 46.25.170 relating to commercial driver's licenses;
4 (17) Chapter 46.29 RCW relating to financial responsibility;
5 (18) RCW 46.30.040 relating to providing false evidence of
6 financial responsibility;
7 (19) RCW 46.37.435 relating to wrongful installation of
8 sunscreening material;
9 (20) RCW 46.44.180 relating to operation of mobile home pilot
10 vehicles;
11 (21) RCW 46.48.175 relating to the transportation of dangerous
12 articles;
13 (22) RCW 46.52.010 relating to duty on striking an unattended car
14 or other property;
15 (23) RCW 46.52.020 relating to duty in case of injury to or death
16 of a person or damage to an attended vehicle;
17 (24) RCW 46.52.090 relating to reports by repairmen, storagemen,
18 and appraisers;
19 (25) RCW 46.52.100 relating to driving under the influence of
20 liquor or drugs;
21 (26) RCW 46.52.130 relating to confidentiality of the driving
22 record to be furnished to an insurance company, an employer, and an
23 alcohol/drug assessment or treatment agency;
24 (27) RCW 46.55.020 relating to engaging in the activities of a
25 registered tow truck operator without a registration certificate;
26 (28) RCW 46.55.035 relating to prohibited practices by tow truck
27 operators;
28 (29) RCW 46.61.015 relating to obedience to police officers,
29 flagmen, or fire fighters;
30 (30) RCW 46.61.020 relating to refusal to give information to or
31 cooperate with an officer;
32 (31) RCW 46.61.022 relating to failure to stop and give
33 identification to an officer;
34 (32) RCW 46.61.024 relating to attempting to elude pursuing police
35 vehicles;
36 (33) RCW 46.61.500 relating to reckless driving;
37 (34) RCW 46.61.502((7)) and 46.61.504((~~7~~, ~~46.61.5051~~, ~~46.61.5052~~,
38 ~~and~~ ~~46.61.5053~~)) relating to persons under the influence of
39 intoxicating liquor or drugs;

- 1 (35) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
2 (36) RCW 46.61.522 relating to vehicular assault;
3 (37) RCW 46.61.525 relating to negligent driving;
4 (38) RCW 46.61.527(4) relating to reckless endangerment of roadway
5 workers;
6 (39) RCW 46.61.530 relating to racing of vehicles on highways;
7 (40) RCW 46.61.685 relating to leaving children in an unattended
8 vehicle with the motor running;
9 (41) RCW 46.64.010 relating to unlawful cancellation of or attempt
10 to cancel a traffic citation;
11 (42) RCW 46.64.048 relating to attempting, aiding, abetting,
12 coercing, and committing crimes;
13 (43) Chapter 46.65 RCW relating to habitual traffic offenders;
14 (44) Chapter 46.70 RCW relating to unfair motor vehicle business
15 practices, except where that chapter provides for the assessment of
16 monetary penalties of a civil nature;
17 (45) Chapter 46.72 RCW relating to the transportation of passengers
18 in for hire vehicles;
19 (46) Chapter 46.80 RCW relating to motor vehicle wreckers;
20 (47) Chapter 46.82 RCW relating to driver's training schools;
21 (48) RCW 46.87.260 relating to alteration or forgery of a cab card,
22 letter of authority, or other temporary authority issued under chapter
23 46.87 RCW;
24 (49) RCW 46.87.290 relating to operation of an unregistered or
25 unlicensed vehicle under chapter 46.87 RCW.

26 **Sec. 17.** RCW 46.04.015 and 1994 c 275 s 1 are each amended to read
27 as follows:

28 "Alcohol concentration" means (1) grams of alcohol per two hundred
29 ten liters of a person's breath, or (2) ~~((the percent by weight of~~
30 ~~alcohol in))~~ grams of alcohol per one hundred milliliters of a person's
31 blood.

32 **Sec. 18.** RCW 46.61.506 and 1994 c 275 s 26 are each amended to
33 read as follows:

34 (1) Upon the trial of any civil or criminal action or proceeding
35 arising out of acts alleged to have been committed by any person while
36 driving or in actual physical control of a vehicle while under the
37 influence of intoxicating liquor or any drug, if the person's alcohol

1 concentration is less than 0.10, it is evidence that may be considered
2 with other competent evidence in determining whether the person was
3 under the influence of intoxicating liquor or any drug.

4 (2) The breath analysis shall be based upon grams of alcohol per
5 two hundred ten liters of breath. The foregoing provisions of this
6 section shall not be construed as limiting the introduction of any
7 other competent evidence bearing upon the question whether the person
8 was under the influence of intoxicating liquor or any drug.

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

19 (4) When a blood test is administered under the provisions of RCW
20 46.20.308, the withdrawal of blood for the purpose of determining its
21 alcoholic or drug content may be performed only by a physician, a
22 registered nurse, or a qualified technician. This limitation shall not
23 apply to the taking of breath specimens.

24 (5) The person tested may have a physician, or a qualified
25 technician, chemist, registered nurse, or other qualified person of his
26 or her own choosing administer one or more tests in addition to any
27 administered at the direction of a law enforcement officer. The
28 failure or inability to obtain an additional test by a person shall not
29 preclude the admission of evidence relating to the test or tests taken
30 at the direction of a law enforcement officer.

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

35 NEW SECTION. **Sec. 19.** A new section is added to chapter 46.04 RCW
36 to read as follows:

37 "Reasonable grounds", when used in the context of a law enforcement
38 officer's decision to make an arrest, means probable cause.

1 NEW SECTION. **Sec. 20.** RCW 46.20.309 is recodified as a section in
2 chapter 46.61 RCW.

3 NEW SECTION. **Sec. 21.** The following acts or parts of acts are
4 each repealed:

- 5 (1) RCW 46.20.365 and 1994 c 275 s 12;
- 6 (2) RCW 46.61.5051 and 1994 c 275 s 4;
- 7 (3) RCW 46.61.5052 and 1994 c 275 s 5; and
- 8 (4) RCW 46.61.5053 and 1994 c 275 s 6.

9 NEW SECTION. **Sec. 22.** 1994 c 275 s 44 (uncodified) is hereby
10 repealed.

11 NEW SECTION. **Sec. 23.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 24.** This act shall take effect September 1,
16 1995, except for sections 13 and 22 of this act which are necessary for
17 the immediate preservation of the public peace, health, or safety, or
18 support of the state government and its existing public institutions,
19 and shall take effect immediately.

20 NEW SECTION. **Sec. 25.** A new section is added to chapter 46.61 RCW
21 to read as follows:

22 Upon the filing of any citation or complaint alleging a violation
23 of RCW 46.61.502 or 46.61.504, upon which there is probable cause to
24 believe a violation has occurred, the prosecuting attorney or city
25 attorney shall not subsequently reduce or amend the charge to any
26 equivalent or lesser criminal offense. This provision shall not affect
27 an attorney's obligations under rules of professional conduct or court
28 rules.

29 NEW SECTION. **Sec. 26.** A new section is added to chapter 46.20 RCW
30 to read as follows:

31 (1) A person is guilty of refusal to submit to a breath alcohol
32 test when he or she:

1 (a) Is arrested for any offense where, at the time of the arrest,
2 the arresting officer has reasonable grounds to believe the arrested
3 person had been driving or was in actual physical control of a motor
4 vehicle while under the influence of intoxicants; and

5 (b) Receives the warnings under RCW 46.20.308(2); and

6 (c) Knowingly, as defined in RCW 9A.08.010(1)(b), refuses to submit
7 to the test offered pursuant to RCW 46.20.308.

8 (2) Refusal to submit to a breath alcohol test is a gross
9 misdemeanor."

10 **SSB 5141** - H COMM AMD

11 By Committee on Law & Justice

12

13 On page 1, line 1 of the title, after "drugs;" strike the remainder
14 of the title and insert "amending RCW 46.20.308, 46.20.309, 46.20.355,
15 46.61.5058, 3.62.090, 35.21.165, 36.32.127, 46.04.480, 46.20.311,
16 46.20.391, 46.61.5054, 46.61.5056, 46.61.5151, 46.04.015, and
17 46.61.506; reenacting and amending RCW 46.63.020; adding new sections
18 to chapter 46.20 RCW; adding new sections to chapter 46.61 RCW; adding
19 a new section to chapter 46.04 RCW; recodifying RCW 46.20.309;
20 repealing RCW 46.20.365, 46.61.5051, 46.61.5052, and 46.61.5053;
21 repealing 1994 c 275 s 44 (uncodified); prescribing penalties;
22 providing an effective date; and declaring an emergency."

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