

2 **SSB 5141 - H AMD 916 Adopted 4-23-95**

3 By Representative Robertson

4

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) 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 or was in  
19 violation of RCW 46.20.309 (as recodified by this act).

20 (2) The test or tests of breath shall be administered at the  
21 direction of a law enforcement officer having reasonable grounds to  
22 believe the person to have been driving or in actual physical control  
23 of a motor vehicle within this state while under the influence of  
24 intoxicating liquor or the person to have been driving or in actual  
25 physical control of a motor vehicle while having alcohol in a  
26 concentration of 0.02 or more in his or her system and being under the  
27 age of twenty-one. However, in those instances where ~~((:—(a)))~~ the  
28 person is incapable due to physical injury, physical incapacity, or  
29 other physical limitation, of providing a breath sample ~~((; or (b) as a~~  
30 ~~result of a traffic accident))~~ or where the person is being treated  
31 ~~((for a medical condition))~~ in a hospital, clinic, doctor's office,  
32 emergency medical vehicle, ambulance, or other similar facility in  
33 which a breath testing instrument is not present or where the officer  
34 has reasonable grounds to believe that the person is under the  
35 influence of a drug, a blood test shall be administered by a qualified

1 person as provided in RCW 46.61.506(4). The officer shall inform the  
2 person of his or her right to refuse the breath or blood test, and of  
3 his or her right to have additional tests administered by any qualified  
4 person of his or her choosing as provided in RCW 46.61.506. The  
5 officer shall warn the driver that:

6 (a) His or her license, permit, or privilege to drive will be  
7 revoked or denied if he or she refuses to submit to the test~~((, and (b)~~  
8 ~~that))~~;

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

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

17 (3) Except as provided in this section, the test administered shall  
18 be of the breath only. If an individual is unconscious or is under  
19 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
20 or vehicular assault as provided in RCW 46.61.522, or if an individual  
21 is under arrest for the crime of driving while under the influence of  
22 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest  
23 results from an accident in which there has been serious bodily injury  
24 to another person ~~((has been injured and there is a reasonable~~  
25 ~~likelihood that such other person may die as a result of injuries~~  
26 ~~sustained in the accident))~~, a breath or blood test may be administered  
27 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 if the person is age twenty-one or over, or is 0.02 or  
6 more if the person is under the age of twenty-one, or the person  
7 refuses to submit to a test, the arresting officer or other law  
8 enforcement officer at whose direction any test has been given, or the  
9 department, where applicable, if the arrest results in a test of the  
10 person's blood, shall:

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

15       (b) Serve notice in writing on the person on behalf of the  
16 department of his or her right to a hearing, specifying the steps he or  
17 she must take to obtain a hearing as provided by subsection (8) of this  
18 section;

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

21       (d) Serve notice in writing that the marked license or permit, if  
22 any, is a temporary license that is valid for sixty days from the date  
23 of arrest or from the date notice has been given in the event notice is  
24 given by the department following a blood test, or until the  
25 suspension, revocation, or denial of the person's license, permit, or  
26 privilege to drive is sustained at a hearing pursuant to subsection (8)  
27 of this section, whichever occurs first. No temporary license is valid  
28 to any greater degree than the license or permit that it replaces; and

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

33       (i) That the officer had reasonable grounds to believe the arrested  
34 person had been driving or was in actual physical control of a motor  
35 vehicle within this state while under the influence of intoxicating  
36 liquor or drugs, or both, or was under the age of twenty-one years and  
37 had been driving or was in actual physical control of a motor vehicle  
38 while having an alcohol concentration of 0.02 or more;

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

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

8 (7) The department of licensing, upon the receipt of a sworn report  
9 ((of the law enforcement officer that the officer had reasonable  
10 grounds to believe the arrested 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 and that the person had  
13 refused to submit to the test or tests upon the request of the law  
14 enforcement officer after being informed that refusal would result in  
15 the revocation of the person's privilege to drive)) or report under a  
16 declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this  
17 section, shall suspend, revoke, deny, or place in probationary status  
18 the person's license ((or)), permit, or privilege to drive or any  
19 nonresident operating privilege, as provided in section 3 of this act,  
20 such suspension, revocation, denial, or placement in probationary  
21 status to be effective beginning sixty days from the date of arrest or  
22 from the date notice has been given in the event notice is given by the  
23 department following a blood test, or when sustained at a hearing  
24 pursuant to subsection (8) of this section, whichever occurs first.

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

33 (8) A person receiving notification under subsection (6)(b) of this  
34 section may, within thirty days after the notice has been given,  
35 request in writing a formal hearing before the department. The person  
36 shall pay a fee of one hundred dollars as part of the request. If the  
37 request is mailed, it must be postmarked within thirty days after  
38 receipt of the notification. Upon timely receipt of such a request  
39 ((and such fee)) for a formal hearing, including receipt of the

1 required one hundred dollar fee, the department shall afford the person  
2 an opportunity for a hearing ((as provided in)). Except as otherwise  
3 provided in this section, the hearing is subject to and shall be  
4 scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332.  
5 The hearing shall be conducted in the county of the arrest, except that  
6 all or part of the hearing may, at the discretion of the department, be  
7 conducted by telephone or other electronic means. The hearing shall be  
8 held within sixty days following the arrest or following the date  
9 notice has been given in the event notice is given by the department  
10 following a blood test, unless otherwise agreed to by the department  
11 and the person, in which case the action by the department shall be  
12 stayed, and any valid temporary license marked under subsection (6)(c)  
13 of this section extended, if the person is otherwise eligible for  
14 licensing. For the purposes of this section, the scope of ((such)) the  
15 hearing shall cover the issues of whether a law enforcement officer had  
16 reasonable grounds to believe the person had been driving or was in  
17 actual physical control of a motor vehicle within this state while  
18 under the influence of intoxicating liquor or any drug or had been  
19 driving or was in actual physical control of a motor vehicle within  
20 this state while having alcohol in his or her system in a concentration  
21 of 0.02 or more and was under the age of twenty-one, whether the person  
22 was placed under arrest, and (a) whether the person refused to submit  
23 to the test or tests upon request of the officer after having been  
24 informed that such refusal would result in the revocation of the  
25 person's license, permit, or privilege to drive, or (b) if a test or  
26 tests were administered, whether the applicable requirements of this  
27 section were satisfied before the administration of the test or tests,  
28 whether the person submitted to the test or tests, or whether a test  
29 was administered without express consent as permitted under this  
30 section, and whether the test or tests indicated that the alcohol  
31 concentration of the person's breath or blood was 0.10 or more if the  
32 person was age twenty-one or over at the time of the arrest, or was  
33 0.02 or more if the person was under the age of twenty-one at the time  
34 of the arrest. The sworn report or report under a declaration  
35 authorized by RCW 9A.72.085 submitted by a law enforcement officer is  
36 prima facie evidence that the officer had reasonable grounds to believe  
37 the person had been driving or was in actual physical control of a  
38 motor vehicle within this state while under the influence of  
39 intoxicating liquor or drugs, or both, or the person had been driving

1 or was in actual physical control of a motor vehicle within this state  
2 while having alcohol in his or her system in a concentration of 0.02 or  
3 more and was under the age of twenty-one and that the officer complied  
4 with the requirements of this section.

5 A hearing officer shall conduct the hearing, may issue subpoenas  
6 for the attendance of witnesses and the production of documents, and  
7 shall administer oaths to witnesses. The hearing officer shall not  
8 issue a subpoena for the attendance of a witness at the request of the  
9 person unless the request is accompanied by the fee required by RCW  
10 5.56.010 for a witness in district court. The sworn report or report  
11 under a declaration authorized by RCW 9A.72.085 of the law enforcement  
12 officer and any other evidence accompanying the report shall be  
13 admissible without further evidentiary foundation and the  
14 certifications authorized by the criminal rules for courts of limited  
15 jurisdiction shall be admissible without further evidentiary  
16 foundation. The person may be represented by counsel, may question  
17 witnesses, may present evidence, and may testify. The department shall  
18 order that the suspension, revocation, denial, or placement in  
19 probationary status either be rescinded or sustained. ((Any decision  
20 by the department revoking a person's driving privilege shall be stayed  
21 and shall not take effect while a formal hearing is pending as provided  
22 in this section or during the pendency of a subsequent appeal to  
23 superior court so long as there is no conviction for a moving violation  
24 or no finding that the person has committed a traffic infraction that  
25 is a moving violation during pendency of the hearing and appeal.

26 (+8)) (9) If the suspension, revocation, denial, or placement in  
27 probationary status is sustained after such a hearing, the person whose  
28 license, privilege, or permit is suspended, revoked, denied, or placed  
29 in probationary status has the right to file a petition in the superior  
30 court of the county of arrest to review the final order of revocation  
31 by the department in the same manner ((provided in RCW 46.20.334)) as  
32 an appeal from a decision of a court of limited jurisdiction. The  
33 appellant must pay the costs associated with obtaining the record of  
34 the hearing before the hearing officer. The filing of the appeal does  
35 not stay the effective date of the suspension, revocation, denial, or  
36 placement in probationary status. A petition filed under this  
37 subsection must include the petitioner's grounds for requesting review.  
38 Upon granting petitioner's request for review, the court shall review  
39 the department's final order of suspension, revocation, denial, or

1 placement in probationary status as expeditiously as possible. If  
2 judicial relief is sought for a stay or other temporary remedy from the  
3 department's action, the court shall not grant such relief unless the  
4 court finds that the appellant is likely to prevail in the appeal and  
5 that without a stay the appellant will suffer irreparable injury. If  
6 the court stays the suspension, revocation, denial, or placement in  
7 probationary status it may impose conditions on such stay.

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

31 A suspension, revocation, or denial imposed under this section,  
32 other than as a result of a breath test refusal, shall be stayed if the  
33 person is accepted for deferred prosecution as provided in chapter  
34 10.05 RCW for the incident upon which the suspension, revocation, or  
35 denial is based. If the deferred prosecution is terminated, the stay  
36 shall be lifted and the suspension, revocation, or denial reinstated.  
37 If the deferred prosecution is completed, the stay shall be lifted and  
38 the suspension, revocation, or denial canceled.

1       (~~(9)~~) (11) When it has been finally determined under the  
2 procedures of this section that a nonresident's privilege to operate a  
3 motor vehicle in this state has been suspended, revoked, or denied, the  
4 department shall give information in writing of the action taken to the  
5 motor vehicle administrator of the state of the person's residence and  
6 of any state in which he or she has a license.

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

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

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

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

24       ~~(4) The law enforcement officer requesting the test or tests under~~  
25 ~~subsection (2) of this section shall warn the person requested to~~  
26 ~~submit to the test that a refusal to submit will result in that~~  
27 ~~person's driver's license or driving privilege being revoked.~~

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

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

34       ~~(b) Serve the person notice in writing on behalf of the department~~  
35 ~~of licensing of the person's right to a hearing, specifying the steps~~  
36 ~~required to obtain a hearing;~~

37       ~~(c) Confiscate the person's Washington state license or permit to~~  
38 ~~drive, if any, and issue a temporary license to replace any confiscated~~



1 license or permit. The temporary license shall be valid for thirty  
2 days from the date of the traffic stop or until the suspension or  
3 revocation of the person's license or permit is sustained at a hearing  
4 as provided by subsection (7) of this section, whichever occurs first.  
5 No temporary license is valid to any greater degree than the license or  
6 permit it replaces;

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

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

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

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

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

18 (6) Upon receipt of the sworn report of a law enforcement officer  
19 under subsection (5) of this section, the department shall suspend or  
20 revoke the driver's license or driving privilege beginning thirty days  
21 from the date of the traffic stop or beginning when the suspension,  
22 revocation, or denial is sustained at a hearing as provided by  
23 subsection (7) of this section. Within fifteen days after notice of a  
24 suspension or revocation has been given, the person may, in writing,  
25 request a formal hearing. If such a request is not made within the  
26 prescribed time the right to a hearing is waived. Upon receipt of such  
27 request, the department shall afford the person an opportunity for a  
28 hearing as provided in RCW 46.20.329 and 46.20.332. The hearing shall  
29 be conducted in the county of the arrest. For the purposes of this  
30 section, the hearing shall cover the issues of whether a law  
31 enforcement officer had reasonable grounds to believe the person had  
32 been driving or was in actual physical control of a motor vehicle  
33 within this state while having alcohol in his or her system, whether  
34 the person refused to submit to the test or tests upon request of the  
35 officer after having been informed that the refusal would result in the  
36 revocation of the person's driver's license or driving privilege, and,  
37 if the test or tests of the person's breath or blood was administered,  
38 whether the results indicated an alcohol concentration of 0.02 or more.  
39 The department shall order that the suspension or revocation of the

1 person's driver's license or driving privilege either be rescinded or  
2 sustained. Any decision by the department suspending or revoking a  
3 person's driver's license or driving privilege is stayed and does not  
4 take effect while a formal hearing is pending under this section or  
5 during the pendency of a subsequent appeal to superior court so long as  
6 there is no conviction for a moving violation or no finding that the  
7 person has committed a traffic infraction that is a moving violation  
8 during the pendency of the hearing and appeal. If the suspension or  
9 revocation of the person's driver's license or driving privilege is  
10 sustained after the hearing, the person may file a petition in the  
11 superior court of the county of arrest to review the final order of  
12 suspension or revocation by the department in the manner provided in  
13 RCW 46.20.334.

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

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

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

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

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

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

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

27 (8) For purposes of this section, "alcohol concentration" means (a)  
28 grams of alcohol per two hundred ten liters of a person's breath, or  
29 (b) the percent by weight of alcohol in a person's blood) is guilty of  
30 driving a motor vehicle after consuming alcohol if the person operates  
31 a motor vehicle within this state and the person:

32 (a) Is under the age of twenty-one;

33 (b) Has, within two hours after operating the motor vehicle, an  
34 alcohol concentration of 0.02 or more, as shown by analysis of the  
35 person's breath or blood made under RCW 46.61.506.

36 (2) It is an affirmative defense to a violation of subsection (1)  
37 of this section which the defendant must prove by a preponderance of  
38 the evidence that the defendant consumed a sufficient quantity of  
39 alcohol after the time of driving and before the administration of an

1 analysis of the person's breath or blood to cause the defendant's  
2 alcohol concentration to be 0.02 or more within two hours after  
3 driving. The court shall not admit evidence of this defense unless the  
4 defendant notifies the prosecution prior to the earlier of: (a) Seven  
5 days prior to trial; or (b) the omnibus or pretrial hearing in the case  
6 of the defendant's intent to assert the affirmative defense.

7 (3) Analyses of blood or breath samples obtained more than two  
8 hours after the alleged driving may be used as evidence that within two  
9 hours of the alleged driving, a person had an alcohol concentration of  
10 0.02 or more in violation of subsection (1) of this section.

11 (4) A violation of this section is a misdemeanor.

12 NEW SECTION. Sec. 3. A new section is added to chapter 46.20 RCW  
13 to read as follows:

14 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or  
15 deny the arrested person's license, permit, or privilege to drive as  
16 follows:

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

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

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

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

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

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

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

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

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

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

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

27 (2) ~~((Upon receipt of the surrendered license, and following the~~  
28 ~~expiration of any period of license suspension or revocation, or~~  
29 ~~following receipt of a sworn statement under RCW 46.20.365 that~~  
30 ~~requires issuance of a probationary license, the department shall issue~~  
31 ~~the person a probationary license if otherwise qualified. The~~  
32 ~~probationary license shall be renewed on the same cycle as the person's~~  
33 ~~regular license would have been renewed until five years after the date~~  
34 ~~of its issuance.))~~ The department shall place a person's driving  
35 privilege in probationary status as required by RCW 10.05.060 or  
36 46.20.308 for a period of five years from the date the probationary  
37 status is required to go into effect.



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

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

15 (iii) By suspension of the offender's license or permit to drive,  
16 or suspension of any nonresident privilege to drive, for a period of  
17 ninety days. The period of license, permit, or privilege suspension  
18 may not be suspended. The court shall notify the department of  
19 licensing of the conviction, and upon receiving notification of the  
20 conviction the department shall suspend the offender's license, permit,  
21 or 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 two days nor more than one  
27 year. Two consecutive 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 five hundred dollars nor more than  
35 five thousand dollars. Five hundred dollars of the fine may not be  
36 suspended or deferred unless the court finds the offender to be  
37 indigent; and

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

1 one hundred twenty days. The period of license, permit, or privilege  
2 suspension 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 suspend the offender's license, permit,  
5 or privilege.

6 (2) A person who is convicted of a violation of RCW 46.61.502 or  
7 46.61.504 and who has one prior offense within five years shall be  
8 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 thirty days nor more than one  
14 year. Thirty 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 five hundred dollars nor more than  
22 five thousand dollars. Five hundred 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 one year. 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 forty-five days nor more than  
37 one year. Forty-five days of the imprisonment may not be suspended or  
38 deferred unless the court finds that the imposition of this mandatory  
39 minimum sentence would impose a substantial risk to the offender's

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

5 (ii) By a fine of not less than seven hundred fifty dollars nor  
6 more than five thousand dollars. Seven hundred fifty dollars of the  
7 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 four hundred fifty days. The period of license, permit, or privilege  
12 revocation may not be suspended. The court shall notify the department  
13 of 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 (3) A person who is convicted of a violation of RCW 46.61.502 or  
17 46.61.504 and who has two or more prior offenses within five years  
18 shall be punished as follows:

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

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

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

35 (iii) By revocation of the offender's license or permit to drive,  
36 or suspension of any nonresident privilege to drive, for a period of  
37 two years. The period of license, permit, or privilege revocation may  
38 not be suspended. The court shall notify the department of licensing  
39 of the conviction, and upon receiving notification of the conviction



1 the department shall revoke the offender's license, permit, or  
2 privilege; or

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

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

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

19 (iii) By revocation of the offender's license or permit to drive,  
20 or suspension of any nonresident privilege to drive, for a period of  
21 three years. The period of license, permit, or privilege revocation  
22 may not be suspended. The court shall notify the department of  
23 licensing of the conviction, and upon receiving notification of the  
24 conviction the department shall revoke the offender's license, permit,  
25 or privilege.

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

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

32 (6)(a) In addition to any nonsuspendable and nondeferrable jail  
33 sentence required by this section, whenever the court imposes less than  
34 one year in jail, the court shall also suspend but shall not defer a  
35 period of confinement for a period not exceeding two years. The court  
36 shall impose conditions of probation that include: (i) Not driving a  
37 motor vehicle within this state without a valid license to drive and  
38 proof of financial responsibility for the future; (ii) not driving a  
39 motor vehicle within this state while having an alcohol concentration

1 of 0.08 or more within two hours after driving; and (iii) not refusing  
2 to submit to a test of his or her breath or blood to determine alcohol  
3 concentration upon request of a law enforcement officer who has  
4 reasonable grounds to believe the person was driving or was in actual  
5 physical control of a motor vehicle within this state while under the  
6 influence of intoxicating liquor. The court may impose conditions of  
7 probation that include nonrepetition, alcohol or drug treatment,  
8 supervised probation, or other conditions that may be appropriate. The  
9 sentence may be imposed in whole or in part upon violation of a  
10 condition of probation during the suspension period.

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

15 (c) For each incident involving a violation of a mandatory  
16 condition of probation imposed under this subsection, the license,  
17 permit, or privilege to drive of the person shall be suspended by the  
18 court for thirty days or, if such license, permit, or privilege to  
19 drive already is suspended, revoked, or denied at the time the finding  
20 of probation violation is made, the suspension, revocation, or denial  
21 then in effect shall be extended by thirty days. The court shall  
22 notify the department of any suspension, revocation, or denial or any  
23 extension of a suspension, revocation, or denial imposed under this  
24 subsection.

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

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

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

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

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

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

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

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

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

5 (1) Upon the arrest of a person or upon the filing of a complaint,  
6 citation, or information in a court of competent jurisdiction, based  
7 upon probable cause to believe that a person has violated RCW 46.61.502  
8 or 46.61.504 or any similar municipal ordinance, if such person has a  
9 (~~previous conviction for violation of either RCW 46.61.502 or~~  
10 ~~46.61.504 or other similar municipal ordinance, and where the offense~~  
11 ~~occurs within a five year period of the previous conviction)) prior  
12 offense within five years as defined in section 5 of this act, and  
13 where the person has been provided written notice that any transfer,  
14 sale, or encumbrance of such person's interest in the vehicle over  
15 which that person was actually driving or had physical control when the  
16 violation occurred, is unlawful pending either acquittal, dismissal,  
17 sixty days after conviction, or other termination of the charge, such  
18 person shall be prohibited from encumbering, selling, or transferring  
19 his or her interest in such vehicle, except as otherwise provided in  
20 (a), (b), and (c) of this subsection, until either acquittal,  
21 dismissal, sixty days after conviction, or other termination of the  
22 charge. The prohibition against transfer of title shall not be stayed  
23 pending the determination of an appeal from the conviction.~~

24 (a) A vehicle encumbered by a bona fide security interest may be  
25 transferred to the secured party or to a person designated by the  
26 secured party;

27 (b) A leased or rented vehicle may be transferred to the lessor,  
28 rental agency, or to a person designated by the lessor or rental  
29 agency; and

30 (c) A vehicle may be transferred to a third party or a vehicle  
31 dealer who is a bona fide purchaser or may be subject to a bona fide  
32 security interest in the vehicle unless it is established that (i) in  
33 the case of a purchase by a third party or vehicle dealer, such party  
34 or dealer had actual notice that the vehicle was subject to the  
35 prohibition prior to the purchase, or (ii) in the case of a security  
36 interest, the holder of the security interest had actual notice that  
37 the vehicle was subject to the prohibition prior to the encumbrance of  
38 title.

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

10 (3) A vehicle subject to forfeiture under this chapter may be  
11 seized by a law enforcement officer of this state upon process issued  
12 by a court of competent jurisdiction. Seizure of a vehicle may be made  
13 without process if the vehicle subject to seizure has been the subject  
14 of a prior judgment in favor of the state in a forfeiture proceeding  
15 based upon this section.

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

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

35 (6) If a person notifies the seizing law enforcement agency in  
36 writing of the person's claim of ownership or right to possession of  
37 the seized vehicle within forty-five days of the seizure, the law  
38 enforcement agency shall give the person or persons a reasonable  
39 opportunity to be heard as to the claim or right. The hearing shall be

1 before the chief law enforcement officer of the seizing agency or the  
2 chief law enforcement officer's designee, except where the seizing  
3 agency is a state agency as defined in RCW 34.12.020, the hearing shall  
4 be before the chief law enforcement officer of the seizing agency or an  
5 administrative law judge appointed under chapter 34.12 RCW, except that  
6 any person asserting a claim or right may remove the matter to a court  
7 of competent jurisdiction. Removal may only be accomplished according  
8 to the rules of civil procedure. The person seeking removal of the  
9 matter must serve process against the state, county, political  
10 subdivision, or municipality that operates the seizing agency, and any  
11 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,  
12 within forty-five days after the person seeking removal has notified  
13 the seizing law enforcement agency of the person's claim of ownership  
14 or right to possession. The court to which the matter is to be removed  
15 shall be the district court when the aggregate value of the vehicle is  
16 within the jurisdictional limit set forth in RCW 3.66.020. A hearing  
17 before the seizing agency and any appeal therefrom shall be under Title  
18 34 RCW. In a court hearing between two or more claimants to the  
19 vehicle involved, the prevailing party shall be entitled to a judgment  
20 for costs and reasonable attorneys' fees. The burden of producing  
21 evidence shall be upon the person claiming to be the legal owner or the  
22 person claiming to have the lawful right to possession of the vehicle.  
23 The seizing law enforcement agency shall promptly return the vehicle to  
24 the claimant upon a determination by the administrative law judge or  
25 court that the claimant is the present legal owner under Title 46 RCW  
26 or is lawfully entitled to possession of the vehicle.

27 (7) When a vehicle is forfeited under this chapter the seizing law  
28 enforcement agency may sell the vehicle, retain it for official use, or  
29 upon application by a law enforcement agency of this state release the  
30 vehicle to that agency for the exclusive use of enforcing this title;  
31 provided, however, that the agency shall first satisfy any bona fide  
32 security interest to which the vehicle is subject under subsection (1)  
33 (a) or (c) of this section.

34 (8) When a vehicle is forfeited, the seizing agency shall keep a  
35 record indicating the identity of the prior owner, if known, a  
36 description of the vehicle, the disposition of the vehicle, the value  
37 of the vehicle at the time of seizure, and the amount of proceeds  
38 realized from disposition of the vehicle.

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

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

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

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

15 (13) The net proceeds of a forfeited vehicle is the value of the  
16 forfeitable interest in the vehicle after deducting the cost of  
17 satisfying a bona fide security interest to which the vehicle is  
18 subject at the time of seizure; and in the case of a sold vehicle,  
19 after deducting the cost of sale, including reasonable fees or  
20 commissions paid to independent selling agents.

21 (14) The value of a sold forfeited vehicle is the sale price. The  
22 value of a retained forfeited vehicle is the fair market value of the  
23 vehicle at the time of seizure, determined when possible by reference  
24 to an applicable commonly used index, such as the index used by the  
25 department of licensing. A seizing agency may, but need not, use an  
26 independent qualified appraiser to determine the value of retained  
27 vehicles. If an appraiser is used, the value of the vehicle appraised  
28 is net of the cost of the appraisal.

29

### PART III - TECHNICAL AMENDMENTS

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

32 (1) There shall be assessed and collected in addition to any fines,  
33 forfeitures, or penalties assessed, other than for parking infractions,  
34 by all courts organized under Title 3 or 35 RCW a public safety and  
35 education assessment equal to sixty percent of such fines, forfeitures,  
36 or penalties, which shall be remitted as provided in chapters 3.46,

1 3.50, 3.62, and 35.20 RCW. The assessment required by this section  
2 shall not be suspended or waived by the court.

3 (2) There shall be assessed and collected in addition to any fines,  
4 forfeitures, or penalties assessed, other than for parking infractions  
5 and for fines levied under ((RCW ~~46.61.5051, 46.61.5052, and~~  
6 ~~46.61.5053~~)) section 5 of this act, and in addition to the public  
7 safety and education assessment required under subsection (1) of this  
8 section, by all courts organized under Title 3 or 35 RCW, an additional  
9 public safety and education assessment equal to fifty percent of the  
10 public safety and education assessment required under subsection (1) of  
11 this section, which shall be remitted to the state treasurer and  
12 deposited as provided in RCW 43.08.250. The additional assessment  
13 required by this subsection shall not be suspended or waived by the  
14 court.

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

17 Except as limited by the maximum penalties authorized by law, no  
18 city or town may establish a penalty for an act that constitutes the  
19 crime of driving while under the influence of intoxicating liquor or  
20 any drug, as provided in RCW 46.61.502, or the crime of being in actual  
21 physical control of a motor vehicle while under the influence of  
22 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is  
23 less than the penalties prescribed for those crimes in ((RCW  
24 ~~46.61.5051, 46.61.5052, and 46.61.5053~~)) section 5 of this act.

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

27 No county may establish a penalty for an act that constitutes the  
28 crime of driving while under the influence of intoxicating liquor or  
29 any drug, as provided for in RCW 46.61.502, or the crime of being in  
30 actual physical control of a motor vehicle while under the influence of  
31 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is  
32 less than the penalties prescribed for those crimes in ((RCW  
33 ~~46.61.5051, 46.61.5052, and 46.61.5053~~)) section 5 of this act.

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

1 "Revoke," in all its forms, means the invalidation for a period of  
2 one calendar year and thereafter until reissue: PROVIDED, That under  
3 the provisions of RCW 46.20.285, 46.20.311, 46.20.265, (~~46.61.5051,~~  
4 ~~46.61.5052, or 46.61.5053~~) or section 5 of this act, and chapter 46.65  
5 RCW the invalidation may last for a period other than one calendar  
6 year.

7 **Sec. 11.** RCW 46.20.311 and 1994 c 275 s 27 are each amended to  
8 read as follows:

9 (1) The department shall not suspend a driver's license or  
10 privilege to drive a motor vehicle on the public highways for a fixed  
11 period of more than one year, except as specifically permitted under  
12 RCW 46.20.342 or other provision of law. Except for a suspension under  
13 RCW 46.20.289 and 46.20.291(5), whenever the license or driving  
14 privilege of any person is suspended by reason of a conviction, a  
15 finding that a traffic infraction has been committed, pursuant to  
16 chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the  
17 suspension shall remain in effect until the person gives and thereafter  
18 maintains proof of financial responsibility for the future as provided  
19 in chapter 46.29 RCW. If the suspension is the result of a violation  
20 of RCW 46.61.502 or 46.61.504, the department shall determine the  
21 person's eligibility for licensing based upon the reports provided by  
22 the alcoholism agency or probation department designated under RCW  
23 46.61.5056 and shall deny reinstatement until enrollment and  
24 participation in an approved program has been established and the  
25 person is otherwise qualified. The department shall not issue to the  
26 person a new, duplicate, or renewal license until the person pays a  
27 reissue fee of twenty dollars. If the suspension is the result of a  
28 violation of RCW 46.61.502 or 46.61.504, or is the result of  
29 administrative action under RCW 46.20.308, the reissue fee shall be  
30 fifty 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 46.20.308 or 46.61.5052, 46.61.5053, or 46.20.365~~) section 3 or  
38 5 of this act; (c) after the expiration of two years for persons



1 convicted of vehicular homicide; or (d) after the expiration of the  
2 applicable revocation period provided by RCW 46.20.265. After the  
3 expiration of the appropriate period, the person may make application  
4 for a new license as provided by law together with a reissue fee in the  
5 amount of twenty dollars, but if the revocation is the result of a  
6 violation of RCW 46.20.308, 46.61.502, or 46.61.504 (~~or is the result~~  
7 ~~of administrative action under RCW 46.20.365~~)), the reissue fee shall  
8 be fifty dollars. If the revocation is the result of a violation of  
9 RCW 46.61.502 or 46.61.504, the department shall determine the person's  
10 eligibility for licensing based upon the reports provided by the  
11 alcoholism agency or probation department designated under RCW  
12 46.61.5056 and shall deny reissuance of a license, permit, or privilege  
13 to drive until enrollment and participation in an approved program has  
14 been established and the person is otherwise qualified. Except for a  
15 revocation under RCW 46.20.265, the department shall not then issue a  
16 new license unless it is satisfied after investigation of the driving  
17 ability of the person that it will be safe to grant the privilege of  
18 driving a motor vehicle on the public highways, and until the person  
19 gives and thereafter maintains proof of financial responsibility for  
20 the future as provided in chapter 46.29 RCW. For a revocation under  
21 RCW 46.20.265, the department shall not issue a new license unless it  
22 is satisfied after investigation of the driving ability of the person  
23 that it will be safe to grant that person the privilege of driving a  
24 motor vehicle on the public highways.

25 (3) Whenever the driver's license of any person is suspended  
26 pursuant to Article IV of the nonresident violators compact or RCW  
27 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue  
28 to the person any new or renewal license until the person pays a  
29 reissue fee of twenty dollars. If the suspension is the result of a  
30 violation of the laws of this or any other state, province, or other  
31 jurisdiction involving (a) the operation or physical control of a motor  
32 vehicle upon the public highways while under the influence of  
33 intoxicating liquor or drugs, or (b) the refusal to submit to a  
34 chemical test of the driver's blood alcohol content, the reissue fee  
35 shall be fifty dollars.

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

1 (1) Any person licensed under this chapter who is convicted of an  
2 offense relating to motor vehicles for which suspension or revocation  
3 of the driver's license is mandatory, other than vehicular homicide or  
4 vehicular assault, may submit to the department an application for an  
5 occupational driver's license. The department, upon receipt of the  
6 prescribed fee and upon determining that the petitioner is engaged in  
7 an occupation or trade that makes it essential that the petitioner  
8 operate a motor vehicle, may issue an occupational driver's license and  
9 may set definite restrictions as provided in RCW 46.20.394. No person  
10 may petition for, and the department shall not issue, an occupational  
11 driver's license that is effective during the first thirty days of any  
12 suspension or revocation imposed for a violation of RCW 46.61.502 or  
13 46.61.504. (~~(No person may petition for, and the department shall not~~  
14 ~~issue, an occupational driver's license if the person is ineligible for~~  
15 ~~such a license under RCW 46.61.5052 or 46.61.5053.)) A person  
16 aggrieved by the decision of the department on the application for an  
17 occupational driver's license may request a hearing as provided by rule  
18 of the department.~~

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

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

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

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

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

36 (3) The director shall cancel an occupational driver's license upon  
37 receipt of notice that the holder thereof has been convicted of  
38 operating a motor vehicle in violation of its restrictions, or of an  
39 offense that pursuant to chapter 46.20 RCW would warrant suspension or

1 revocation of a regular driver's license. The cancellation is  
2 effective as of the date of the conviction, and continues with the same  
3 force and effect as any suspension or revocation under this title.

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

6 (1)(a) In addition to penalties set forth in RCW 46.61.5051 through  
7 46.61.5053 until September 1, 1995, and section 5 of this act  
8 thereafter, a one hundred twenty-five dollar fee shall be assessed to  
9 a person who is either convicted, sentenced to a lesser charge, or  
10 given deferred prosecution, as a result of an arrest for violating RCW  
11 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for the  
12 purpose of funding the Washington state toxicology laboratory and the  
13 Washington state patrol breath test program.

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

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

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

26 (a) Forty percent shall be subject to distribution under RCW  
27 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

28 (b) If the case involves a blood test by the state toxicology  
29 laboratory, the remainder of the fee shall be forwarded to the state  
30 treasurer for deposit in the death investigations account to be used  
31 solely for funding the state toxicology laboratory blood testing  
32 program.

33 (c) Otherwise, the remainder of the fee shall be forwarded to the  
34 state treasurer for deposit in the state patrol highway account to be  
35 used solely for funding the Washington state patrol breath test  
36 program.

37 (3) This section applies to any offense committed on or after July  
38 1, 1993.

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

3       (1) A person subject to alcohol assessment and treatment under  
4 (~~RCW 46.61.5051, 46.61.5052, or 46.61.5053~~) section 5 of this act  
5 shall be required by the court to complete a course in an alcohol  
6 information school approved by the department of social and health  
7 services or to complete more intensive treatment in a program approved  
8 by the department of social and health services, as determined by the  
9 court. The court shall notify the department of licensing whenever it  
10 orders a person to complete a course or treatment program under this  
11 section.

12       (2) A diagnostic evaluation and treatment recommendation shall be  
13 prepared under the direction of the court by an alcoholism agency  
14 approved by the department of social and health services or a qualified  
15 probation department approved by the department of social and health  
16 services. A copy of the report shall be forwarded to the department of  
17 licensing. Based on the diagnostic evaluation, the court shall  
18 determine whether the person shall be required to complete a course in  
19 an alcohol information school approved by the department of social and  
20 health services or more intensive treatment in a program approved by  
21 the department of social and health services.

22       (3) Standards for approval for alcohol treatment programs shall be  
23 prescribed by the department of social and health services. The  
24 department of social and health services shall periodically review the  
25 costs of alcohol information schools and treatment programs.

26       (4) Any agency that provides treatment ordered under (~~RCW~~  
27 ~~46.61.5051, 46.61.5052, or 46.61.5053~~) section 5 of this act, shall  
28 immediately report to the appropriate probation department where  
29 applicable, otherwise to the court, and to the department of licensing  
30 any noncompliance by a person with the conditions of his or her ordered  
31 treatment. The court shall notify the department of licensing and the  
32 department of social and health services of any failure by an agency to  
33 so report noncompliance. Any agency with knowledge of noncompliance  
34 that fails to so report shall be fined two hundred fifty dollars by the  
35 department of social and health services. Upon three such failures by  
36 an agency within one year, the department of social and health services  
37 shall revoke the agency's approval under this section.

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

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

6 A sentencing court may allow persons convicted of violating RCW  
7 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in  
8 (~~RCW 46.61.5051, 46.61.5052, or 46.61.5053~~) section 5 of this act in  
9 nonconsecutive or intermittent time periods. However, any mandatory  
10 minimum sentence under (~~RCW 46.61.5051, 46.61.5052, or 46.61.5053~~)  
11 section 5 of this act shall be served consecutively unless suspended or  
12 deferred as otherwise provided by law.

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

15 Failure to perform any act required or the performance of any act  
16 prohibited by this title or an equivalent administrative regulation or  
17 local law, ordinance, regulation, or resolution relating to traffic  
18 including parking, standing, stopping, and pedestrian offenses, is  
19 designated as a traffic infraction and may not be classified as a  
20 criminal offense, except for an offense contained in the following  
21 provisions of this title or a violation of an equivalent administrative  
22 regulation or local law, ordinance, regulation, or resolution:

23 (1) RCW 46.09.120(2) relating to the operation of a nonhighway  
24 vehicle while under the influence of intoxicating liquor or a  
25 controlled substance;

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

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

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

31 (5) Chapter 46.12 RCW relating to certificates of ownership and  
32 registration;

33 (6) RCW 46.16.010 relating to initial registration of motor  
34 vehicles;

35 (7) RCW 46.16.011 relating to permitting unauthorized persons to  
36 drive;

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

1 (9) RCW 46.16.381 (6) or (9) relating to unauthorized use or  
2 acquisition of a special placard or license plate for disabled persons'  
3 parking;  
4 (10) RCW 46.20.021 relating to driving without a valid driver's  
5 license;  
6 (11) RCW 46.20.336 relating to the unlawful possession and use of  
7 a driver's license;  
8 (12) RCW 46.20.342 relating to driving with a suspended or revoked  
9 license or status;  
10 (13) RCW 46.20.410 relating to the violation of restrictions of an  
11 occupational driver's license;  
12 (14) RCW 46.20.420 relating to the operation of a motor vehicle  
13 with a suspended or revoked license;  
14 (15) RCW 46.20.750 relating to assisting another person to start a  
15 vehicle equipped with an ignition interlock device;  
16 (16) RCW 46.25.170 relating to commercial driver's licenses;  
17 (17) Chapter 46.29 RCW relating to financial responsibility;  
18 (18) RCW 46.30.040 relating to providing false evidence of  
19 financial responsibility;  
20 (19) RCW 46.37.435 relating to wrongful installation of  
21 sunscreening material;  
22 (20) RCW 46.44.180 relating to operation of mobile home pilot  
23 vehicles;  
24 (21) RCW 46.48.175 relating to the transportation of dangerous  
25 articles;  
26 (22) RCW 46.52.010 relating to duty on striking an unattended car  
27 or other property;  
28 (23) RCW 46.52.020 relating to duty in case of injury to or death  
29 of a person or damage to an attended vehicle;  
30 (24) RCW 46.52.090 relating to reports by repairmen, storagemen,  
31 and appraisers;  
32 (25) RCW 46.52.100 relating to driving under the influence of  
33 liquor or drugs;  
34 (26) RCW 46.52.130 relating to confidentiality of the driving  
35 record to be furnished to an insurance company, an employer, and an  
36 alcohol/drug assessment or treatment agency;  
37 (27) RCW 46.55.020 relating to engaging in the activities of a  
38 registered tow truck operator without a registration certificate;

1 (28) RCW 46.55.035 relating to prohibited practices by tow truck  
2 operators;

3 (29) RCW 46.61.015 relating to obedience to police officers,  
4 flagmen, or fire fighters;

5 (30) RCW 46.61.020 relating to refusal to give information to or  
6 cooperate with an officer;

7 (31) RCW 46.61.022 relating to failure to stop and give  
8 identification to an officer;

9 (32) RCW 46.61.024 relating to attempting to elude pursuing police  
10 vehicles;

11 (33) RCW 46.61.500 relating to reckless driving;

12 (34) RCW 46.61.502(~~(7)~~) and 46.61.504(~~(7, 46.61.5051, 46.61.5052,~~  
13 ~~and 46.61.5053)~~) relating to persons under the influence of  
14 intoxicating liquor or drugs;

15 (35) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

16 (36) RCW 46.61.522 relating to vehicular assault;

17 (37) RCW 46.61.525 relating to negligent driving;

18 (38) RCW 46.61.527(4) relating to reckless endangerment of roadway  
19 workers;

20 (39) RCW 46.61.530 relating to racing of vehicles on highways;

21 (40) RCW 46.61.685 relating to leaving children in an unattended  
22 vehicle with the motor running;

23 (41) RCW 46.64.010 relating to unlawful cancellation of or attempt  
24 to cancel a traffic citation;

25 (42) RCW 46.64.048 relating to attempting, aiding, abetting,  
26 coercing, and committing crimes;

27 (43) Chapter 46.65 RCW relating to habitual traffic offenders;

28 (44) Chapter 46.70 RCW relating to unfair motor vehicle business  
29 practices, except where that chapter provides for the assessment of  
30 monetary penalties of a civil nature;

31 (45) Chapter 46.72 RCW relating to the transportation of passengers  
32 in for hire vehicles;

33 (46) Chapter 46.80 RCW relating to motor vehicle wreckers;

34 (47) Chapter 46.82 RCW relating to driver's training schools;

35 (48) RCW 46.87.260 relating to alteration or forgery of a cab card,  
36 letter of authority, or other temporary authority issued under chapter  
37 46.87 RCW;

38 (49) RCW 46.87.290 relating to operation of an unregistered or  
39 unlicensed vehicle under chapter 46.87 RCW.

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

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

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

9       (1) Upon the trial of any civil or criminal action or proceeding  
10 arising out of acts alleged to have been committed by any person while  
11 driving or in actual physical control of a vehicle while under the  
12 influence of intoxicating liquor or any drug, if the person's alcohol  
13 concentration is less than 0.10, it is evidence that may be considered  
14 with other competent evidence in determining whether the person was  
15 under the influence of intoxicating liquor or any drug.

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

21       (3) Analysis of the person's blood or breath to be considered valid  
22 under the provisions of this section or RCW 46.61.502 or 46.61.504  
23 shall have been performed according to methods approved by the state  
24 toxicologist and by an individual possessing a valid permit issued by  
25 the state toxicologist for this purpose. The state toxicologist is  
26 directed to approve satisfactory techniques or methods, to supervise  
27 the examination of individuals to ascertain their qualifications and  
28 competence to conduct such analyses, and to issue permits which shall  
29 be subject to termination or revocation at the discretion of the state  
30 toxicologist.

31       (4) When a blood test is administered under the provisions of RCW  
32 46.20.308, the withdrawal of blood for the purpose of determining its  
33 alcoholic or drug content may be performed only by a physician, a  
34 registered nurse, or a qualified technician. This limitation shall not  
35 apply to the taking of breath specimens.

36       (5) The person tested may have a physician, or a qualified  
37 technician, chemist, registered nurse, or other qualified person of his  
38 or her own choosing administer one or more tests in addition to any



1 administered at the direction of a law enforcement officer. The  
2 failure or inability to obtain an additional test by a person shall not  
3 preclude the admission of evidence relating to the test or tests taken  
4 at the direction of a law enforcement officer.

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

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

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

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

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

- 17 (1) RCW 46.20.365 and 1994 c 275 s 12;  
18 (2) RCW 46.61.5051 and 1994 c 275 s 4;  
19 (3) RCW 46.61.5052 and 1994 c 275 s 5; and  
20 (4) RCW 46.61.5053 and 1994 c 275 s 6.

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

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

27 NEW SECTION. **Sec. 24.** This act shall take effect September 1,  
28 1995, except for sections 13 and 22 of this act which are necessary for  
29 the immediate preservation of the public peace, health, or safety, or  
30 support of the state government and its existing public institutions,  
31 and shall take effect immediately."

1 **SSB 5141** - H AMD  
2 By Representative Robertson

3

4 On page 1, line 1 of the title, after "drugs;" strike the remainder  
5 of the title and insert "amending RCW 46.20.308, 46.20.309, 46.20.355,  
6 46.61.5058, 3.62.090, 35.21.165, 36.32.127, 46.04.480, 46.20.311,  
7 46.20.391, 46.61.5054, 46.61.5056, 46.61.5151, 46.04.015, and  
8 46.61.506; reenacting and amending RCW 46.63.020; adding a new section  
9 to chapter 46.20 RCW; adding new sections to chapter 46.61 RCW; adding  
10 a new section to chapter 46.04 RCW; recodifying RCW 46.20.309;  
11 repealing RCW 46.20.365, 46.61.5051, 46.61.5052, and 46.61.5053;  
12 repealing 1994 c 275 s 44 (uncodified); prescribing penalties;  
13 providing an effective date; and declaring an emergency."

--- END ---