

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6142

Chapter 209, Laws of 1998

55th Legislature
1998 Regular Session

DRIVING UNDER THE INFLUENCE--ADMINISTRATIVE LICENSE SUSPENSION FOR
FIRST-TIME OFFENDERS

EFFECTIVE DATE: 1/1/99

Passed by the Senate March 7, 1998
YEAS 43 NAYS 5

BRAD OWEN

President of the Senate

Passed by the House March 5, 1998
YEAS 67 NAYS 30

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved March 30, 1998

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 6142** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O'CONNELL

Secretary

FILED

March 30, 1998 - 2:46 p.m.

GARY LOCKE

Governor of the State of Washington

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 6142

AS AMENDED BY THE HOUSE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1998 Regular Session

By Senators Kline, Roach, Patterson, Fairley, Swecker, T. Sheldon,
Goings, Rasmussen, Oke and Benton

Read first time 01/12/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to administrative license suspension for first-time
2 violators of laws against driving or being in actual physical control
3 of a motor vehicle while under the influence of intoxicating liquor or
4 any drug; amending RCW 46.20.308, 46.20.3101, 46.20.355, and 46.20.391;
5 creating a new section; prescribing penalties; and providing an
6 effective date.

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

8 **Sec. 1.** RCW 46.20.308 and 1995 c 332 s 1 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 alcohol concentration or presence of any
14 drug in his or her breath or blood if arrested for any offense where,
15 at the time of the arrest, the arresting officer has reasonable grounds
16 to believe the person had been driving or was in actual physical
17 control of a motor vehicle while under the influence of intoxicating
18 liquor or any drug or was in violation of RCW 46.61.503.

1 (2) The test or tests of breath shall be administered at the
2 direction of a law enforcement officer having reasonable grounds to
3 believe the person to have been driving or in actual physical control
4 of a motor vehicle within this state while under the influence of
5 intoxicating liquor or the person to have been driving or in actual
6 physical control of a motor vehicle while having alcohol in a
7 concentration of 0.02 or more in his or her system and being under the
8 age of twenty-one. However, in those instances where the person is
9 incapable due to physical injury, physical incapacity, or other
10 physical limitation, of providing a breath sample or where the person
11 is being treated in a hospital, clinic, doctor's office, emergency
12 medical vehicle, ambulance, or other similar facility in which a breath
13 testing instrument is not present or where the officer has reasonable
14 grounds to believe that the person is under the influence of a drug, a
15 blood test shall be administered by a qualified person as provided in
16 RCW 46.61.506(4). The officer shall inform the person of his or her
17 right to refuse the breath or blood test, and of his or her right to
18 have additional tests administered by any qualified person of his or
19 her choosing as provided in RCW 46.61.506. The officer shall warn the
20 driver that:

21 (a) His or her license, permit, or privilege to drive will be
22 revoked or denied if he or she refuses to submit to the test;

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

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

31 (3) Except as provided in this section, the test administered shall
32 be of the breath only. If an individual is unconscious or is under
33 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
34 or vehicular assault as provided in RCW 46.61.522, or if an individual
35 is under arrest for the crime of driving while under the influence of
36 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
37 results from an accident in which there has been serious bodily injury
38 to another person, a breath or blood test may be administered without
39 the consent of the individual so arrested.

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

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

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

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

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

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

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

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

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

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

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

18 (7) The department of licensing, upon the receipt of a sworn report
19 or report under a declaration authorized by RCW 9A.72.085 under
20 subsection (6)(e) of this section, shall suspend, revoke, or deny(~~(, or~~
21 ~~place in probationary status))~~) the person's license, permit, or
22 privilege to drive or any nonresident operating privilege, as provided
23 in RCW 46.20.3101, such suspension, revocation, or denial(~~(, or~~
24 ~~placement in probationary status))~~) to be effective beginning sixty days
25 from the date of arrest or from the date notice has been given in the
26 event notice is given by the department following a blood test, or when
27 sustained at a hearing pursuant to subsection (8) of this section,
28 whichever occurs first.

29 (8) A person receiving notification under subsection (6)(b) of this
30 section may, within thirty days after the notice has been given,
31 request in writing a formal hearing before the department. The person
32 shall pay a fee of one hundred dollars as part of the request. If the
33 request is mailed, it must be postmarked within thirty days after
34 receipt of the notification. Upon timely receipt of such a request for
35 a formal hearing, including receipt of the required one hundred dollar
36 fee, the department shall afford the person an opportunity for a
37 hearing. Except as otherwise provided in this section, the hearing is
38 subject to and shall be scheduled and conducted in accordance with RCW
39 46.20.329 and 46.20.332. The hearing shall be conducted in the county

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

1 A hearing officer shall conduct the hearing, may issue subpoenas
2 for the attendance of witnesses and the production of documents, and
3 shall administer oaths to witnesses. The hearing officer shall not
4 issue a subpoena for the attendance of a witness at the request of the
5 person unless the request is accompanied by the fee required by RCW
6 5.56.010 for a witness in district court. The sworn report or report
7 under a declaration authorized by RCW 9A.72.085 of the law enforcement
8 officer and any other evidence accompanying the report shall be
9 admissible without further evidentiary foundation and the
10 certifications authorized by the criminal rules for courts of limited
11 jurisdiction shall be admissible without further evidentiary
12 foundation. The person may be represented by counsel, may question
13 witnesses, may present evidence, and may testify. The department shall
14 order that the suspension, revocation, or denial(~~(, or placement in~~
15 ~~probationary status))~~) either be rescinded or sustained.

16 (9) If the suspension, revocation, or denial(~~(, or placement in~~
17 ~~probationary status))~~) is sustained after such a hearing, the person
18 whose license, privilege, or permit is suspended, revoked, or denied(~~(, or~~
19 ~~placed in probationary status))~~) has the right to file a petition in
20 the superior court of the county of arrest to review the final order of
21 revocation by the department in the same manner as an appeal from a
22 decision of a court of limited jurisdiction. The appellant must pay
23 the costs associated with obtaining the record of the hearing before
24 the hearing officer. The filing of the appeal does not stay the
25 effective date of the suspension, revocation, or denial(~~(, or placement~~
26 ~~in probationary status))~~). A petition filed under this subsection must
27 include the petitioner's grounds for requesting review. Upon granting
28 petitioner's request for review, the court shall review the
29 department's final order of suspension, revocation, or denial(~~(, or~~
30 ~~placement in probationary status))~~) as expeditiously as possible. If
31 judicial relief is sought for a stay or other temporary remedy from the
32 department's action, the court shall not grant such relief unless the
33 court finds that the appellant is likely to prevail in the appeal and
34 that without a stay the appellant will suffer irreparable injury. If
35 the court stays the suspension, revocation, or denial(~~(, or placement~~
36 ~~in probationary status))~~) it may impose conditions on such stay.

37 (10) If a person whose driver's license, permit, or privilege to
38 drive has been or will be suspended, revoked, or denied(~~(, or placed in~~
39 ~~probationary status))~~) under subsection (7) of this section, other than

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

22 A suspension, revocation, or denial imposed under this section,
23 other than as a result of a breath test refusal, shall be stayed if the
24 person is accepted for deferred prosecution as provided in chapter
25 10.05 RCW for the incident upon which the suspension, revocation, or
26 denial is based. If the deferred prosecution is terminated, the stay
27 shall be lifted and the suspension, revocation, or denial reinstated.
28 If the deferred prosecution is completed, the stay shall be lifted and
29 the suspension, revocation, or denial canceled.

30 (11) When it has been finally determined under the procedures of
31 this section that a nonresident's privilege to operate a motor vehicle
32 in this state has been suspended, revoked, or denied, the department
33 shall give information in writing of the action taken to the motor
34 vehicle administrator of the state of the person's residence and of any
35 state in which he or she has a license.

36 **Sec. 2.** RCW 46.20.3101 and 1995 c 332 s 3 are each amended to read
37 as follows:

1 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
2 deny the arrested person's license, permit, or privilege to drive as
3 follows:

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

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

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

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

19 (a) For a first incident within five years, where there has not
20 been a previous incident within five years that resulted in
21 administrative action under this section, (~~placement in probationary~~
22 ~~status as provided in RCW 46.20.355~~) suspension for ninety days;

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

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

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

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

34 **Sec. 3.** RCW 46.20.355 and 1995 1st sp.s. c 17 s 1 are each amended
35 to read as follows:

36 (1) Upon (~~placing a license, permit, or privilege to drive in~~
37 ~~probationary status under RCW 46.20.3101(2)(a), or upon~~) receipt of an
38 abstract indicating a deferred prosecution has been granted under RCW

1 10.05.060, or upon receipt of a notice of conviction of RCW 46.61.502
2 or 46.61.504, the department of licensing shall order the person to
3 surrender any Washington state driver's license that may be in his or
4 her possession. The department shall revoke the license, permit, or
5 privilege to drive of any person who fails to surrender it as required
6 by this section for one year, unless the license has been previously
7 surrendered to the department, a law enforcement officer, or a court,
8 or the person has completed an affidavit of lost, stolen, destroyed, or
9 previously surrendered license, such revocation to take effect thirty
10 days after notice is given of the requirement for license surrender.

11 (2) The department shall place a person's driving privilege in
12 probationary status as required by RCW 10.05.060(~~(, 46.20.308,)~~) or
13 46.61.5055 for a period of five years from the date the probationary
14 status is required to go into effect.

15 (3) Following receipt of an abstract indicating a deferred
16 prosecution has been granted under RCW 10.05.060, (~~(or following~~
17 ~~receipt of a sworn report under RCW 46.20.308 that requires immediate~~
18 ~~placement in probationary status under RCW 46.20.3101(2)(a),)~~) or upon
19 reinstatement or reissuance of a driver's license suspended or revoked
20 as the result of a conviction of RCW 46.61.502 or 46.61.504, the
21 department shall require the person to obtain a probationary license in
22 order to operate a motor vehicle in the state of Washington, except as
23 otherwise exempt under RCW 46.20.025. The department shall not issue
24 the probationary license unless the person is otherwise qualified for
25 licensing, and the person must renew the probationary license on the
26 same cycle as the person's regular license would have been renewed
27 until the expiration of the five-year probationary status period
28 imposed under subsection (2) of this section.

29 (4) For each original issue or renewal of a probationary license
30 under this section, the department shall charge a fee of fifty dollars
31 in addition to any other licensing fees required. Except for when
32 renewing a probationary license, the department shall waive the fifty-
33 dollar fee if the person has a probationary license in his or her
34 possession at the time a new probationary license is required.

35 (5) A probationary license shall enable the department and law
36 enforcement personnel to determine that the person is on probationary
37 status. The fact that a person's driving privilege is in probationary
38 status or that the person has been issued a probationary license shall

1 not be a part of the person's record that is available to insurance
2 companies.

3 **Sec. 4.** RCW 46.20.391 and 1995 c 332 s 12 are each amended to read
4 as follows:

5 (1) Any person licensed under this chapter who is convicted of an
6 offense relating to motor vehicles for which suspension or revocation
7 of the driver's license is mandatory, other than vehicular homicide or
8 vehicular assault, or who has had his or her license suspended under
9 RCW 46.20.3101 (2)(a) or (3)(a), may submit to the department an
10 application for an occupational driver's license. The department, upon
11 receipt of the prescribed fee and upon determining that the petitioner
12 is engaged in an occupation or trade that makes it essential that the
13 petitioner operate a motor vehicle, may issue an occupational driver's
14 license and may set definite restrictions as provided in RCW 46.20.394.
15 No person may petition for, and the department shall not issue, an
16 occupational driver's license that is effective during the first thirty
17 days of any suspension or revocation imposed for a violation of RCW
18 46.61.502 or 46.61.504 or pursuant to RCW 46.20.3101 (2)(a) or (3)(a).
19 A person aggrieved by the decision of the department on the application
20 for an occupational driver's license may request a hearing as provided
21 by rule of the department.

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

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

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

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

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

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

8 NEW SECTION. **Sec. 5.** If specific funding for the purposes of this
9 act, referencing this act by bill or chapter number, is not provided by
10 June 30, 1998, in the omnibus appropriations act, this act is null and
11 void.

12 NEW SECTION. **Sec. 6.** This act takes effect January 1, 1999.

Passed the Senate March 7, 1998.

Passed the House March 5, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.