
SENATE BILL 5374

State of Washington 56th Legislature 1999 Regular Session

By Senators Heavey and Johnson; by request of Department of Licensing

Read first time 01/21/1999. Referred to Committee on Transportation.

1 AN ACT Relating to corrective amendments to certain drivers'
2 licensing statutes; amending RCW 46.20.091, 46.20.289, 46.20.342, and
3 46.65.060; and reenacting and amending RCW 46.20.308, 46.20.391,
4 46.52.100, and 46.61.5055.

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

6 **Sec. 1.** RCW 46.20.091 and 1998 c 41 s 11 are each amended to read
7 as follows:

8 (1) Every application for an instruction permit or for an original
9 driver's license shall be made upon a form prescribed and furnished by
10 the department which shall be sworn to and signed by the applicant
11 before a person authorized to administer oaths. An applicant making a
12 false statement under this subsection is guilty of false swearing, a
13 gross misdemeanor, under RCW 9A.72.040. ~~((Every))~~ An application for
14 an instruction permit ~~((containing))~~ to be issued with a photograph
15 ~~((shall))~~ must be accompanied by a fee of five dollars. An application
16 for an instruction permit to be issued without a photograph must be
17 accompanied by a fee of four dollars. The department shall forthwith
18 transmit the fees collected for instruction permits and temporary
19 drivers' permits to the state treasurer.

1 (2) Every such application shall state the name of record, date of
2 birth, sex, and Washington residence address of the applicant, and
3 briefly describe the applicant, and shall state whether the applicant
4 has theretofore been licensed as a driver or chauffeur, and, if so,
5 when and by what state or country, and whether any such license has
6 ever been suspended or revoked, or whether an application has ever been
7 refused, and, if so, the date of and reason for such suspension,
8 revocation, or refusal, and shall state such additional information as
9 the department shall require, including a statement that identifying
10 documentation presented by the applicant is valid.

11 (3) Whenever application is received from a person previously
12 licensed in another jurisdiction, the department shall request a copy
13 of such driver's record from such other jurisdiction. When received,
14 the driving record shall become a part of the driver's record in this
15 state.

16 (4) Whenever the department receives request for a driving record
17 from another licensing jurisdiction, the record shall be forwarded
18 without charge if the other licensing jurisdiction extends the same
19 privilege to the state of Washington. Otherwise there shall be a
20 reasonable charge for transmittal of the record, the amount to be fixed
21 by the director of the department.

22 **Sec. 2.** RCW 46.20.289 and 1995 c 219 s 2 are each amended to read
23 as follows:

24 The department shall suspend all driving privileges of a person
25 when the department receives notice from a court under RCW
26 46.63.070(5), 46.63.110(5), or 46.64.025 that the person has failed to
27 respond to a notice of traffic infraction, failed to appear at a
28 requested hearing, violated a written promise to appear in court, or
29 has failed to comply with the terms of a notice of traffic infraction
30 or citation, other than for a notice of a violation of RCW 46.55.105 or
31 a standing, stopping, or parking violation. A suspension under this
32 section takes effect thirty days after the date the department mails
33 notice of the suspension, and remains in effect until the department
34 has received a certificate from the court showing that the case has
35 been adjudicated, and until the person meets the requirements of RCW
36 46.20.311. A suspension under this section does not take effect if,
37 prior to the effective date of the suspension, the department receives

1 a certificate from the court showing that the case has been
2 adjudicated.

3 **Sec. 3.** RCW 46.20.308 and 1998 c 213 s 1, 1998 c 209 s 1, 1998 c
4 207 s 7, and 1998 c 41 s 4 are each reenacted and amended to read as
5 follows:

6 (1) Any person who operates a motor vehicle within this state is
7 deemed to have given consent, subject to the provisions of RCW
8 46.61.506, to a test or tests of his or her breath or blood for the
9 purpose of determining the alcohol concentration or presence of any
10 drug in his or her breath or blood if arrested for any offense where,
11 at the time of the arrest, the arresting officer has reasonable grounds
12 to believe the person had been driving or was in actual physical
13 control of a motor vehicle while under the influence of intoxicating
14 liquor or any drug or was in violation of RCW 46.61.503.

15 (2) The test or tests of breath shall be administered at the
16 direction of a law enforcement officer having reasonable grounds to
17 believe the person to have been driving or in actual physical control
18 of a motor vehicle within this state while under the influence of
19 intoxicating liquor or any drug or the person to have been driving or
20 in actual physical control of a motor vehicle while having alcohol in
21 a concentration in violation of RCW 46.61.503 in his or her system and
22 being under the age of twenty-one. However, in those instances where
23 the person is incapable due to physical injury, physical incapacity, or
24 other physical limitation, of providing a breath sample or where the
25 person is being treated in a hospital, clinic, doctor's office,
26 emergency medical vehicle, ambulance, or other similar facility in
27 which a breath testing instrument is not present or where the officer
28 has reasonable grounds to believe that the person is under the
29 influence of a drug, a blood test shall be administered by a qualified
30 person as provided in RCW 46.61.506(4). The officer shall inform the
31 person of his or her right to refuse the breath or blood test, and of
32 his or her right to have additional tests administered by any qualified
33 person of his or her choosing as provided in RCW 46.61.506. The
34 officer shall warn the driver that:

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

37 (b) His or her license, permit, or privilege to drive will be
38 suspended, revoked, or denied if the test is administered and the test

1 indicates the alcohol concentration of the person's breath or blood is
2 0.08 or more, in the case of a person age twenty-one or over, or in
3 violation of RCW 46.61.502, 46.61.503, or 46.61.504 in the case of a
4 person under age twenty-one; and

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

7 (3) Except as provided in this section, the test administered shall
8 be of the breath only. If an individual is unconscious or is under
9 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
10 or vehicular assault as provided in RCW 46.61.522, or if an individual
11 is under arrest for the crime of driving while under the influence of
12 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
13 results from an accident in which there has been serious bodily injury
14 to another person, a breath or blood test may be administered without
15 the consent of the individual so arrested.

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

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

27 (6) If, after arrest and after the other applicable conditions and
28 requirements of this section have been satisfied, a test or tests of
29 the person's blood or breath is administered and the test results
30 indicate that the alcohol concentration of the person's breath or blood
31 is 0.08 or more if the person is age twenty-one or over, or is in
32 violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is
33 under the age of twenty-one, or the person refuses to submit to a test,
34 the arresting officer or other law enforcement officer at whose
35 direction any test has been given, or the department, where applicable,
36 if the arrest results in a test of the person's blood, shall:

37 (a) Serve notice in writing on the person on behalf of the
38 department of its intention to suspend, revoke, or deny the person's

1 license, permit, or privilege to drive as required by subsection (7) of
2 this section;

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

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

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

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

21 (i) That the officer had reasonable grounds to believe the arrested
22 person had been driving or was in actual physical control of a motor
23 vehicle within this state while under the influence of intoxicating
24 liquor or drugs, or both, or was under the age of twenty-one years and
25 had been driving or was in actual physical control of a motor vehicle
26 while having an alcohol concentration in violation of RCW 46.61.503;

27 (ii) That after receipt of the warnings required by subsection (2)
28 of this section the person refused to submit to a test of his or her
29 blood or breath, or a test was administered and the results indicated
30 that the alcohol concentration of the person's breath or blood was 0.08
31 or more if the person is age twenty-one or over, or was in violation of
32 RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age
33 of twenty-one; and

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

35 (7) The department of licensing, upon the receipt of a sworn report
36 or report under a declaration authorized by RCW 9A.72.085 under
37 subsection (6)(e) of this section, shall suspend, revoke, or deny the
38 person's license, permit, or privilege to drive or any nonresident
39 operating privilege, as provided in RCW 46.20.3101, such suspension,

1 revocation, or denial to be effective beginning sixty days from the
2 date of arrest or from the date notice has been given in the event
3 notice is given by the department following a blood test, or when
4 sustained at a hearing pursuant to subsection (8) of this section,
5 whichever occurs first.

6 (8) A person receiving notification under subsection (6)(b) of this
7 section may, within thirty days after the notice has been given,
8 request in writing a formal hearing before the department. The person
9 shall pay a fee of one hundred dollars as part of the request. If the
10 request is mailed, it must be postmarked within thirty days after
11 receipt of the notification. Upon timely receipt of such a request for
12 a formal hearing, including receipt of the required one hundred dollar
13 fee, the department shall afford the person an opportunity for a
14 hearing. Except as otherwise provided in this section, the hearing is
15 subject to and shall be scheduled and conducted in accordance with RCW
16 46.20.329 and 46.20.332. The hearing shall be conducted in the county
17 of the arrest, except that all or part of the hearing may, at the
18 discretion of the department, be conducted by telephone or other
19 electronic means. The hearing shall be held within sixty days
20 following the arrest or following the date notice has been given in the
21 event notice is given by the department following a blood test, unless
22 otherwise agreed to by the department and the person, in which case the
23 action by the department shall be stayed, and any valid temporary
24 license marked under subsection (6)(c) of this section extended, if the
25 person is otherwise eligible for licensing. For the purposes of this
26 section, the scope of the hearing shall cover the issues of whether a
27 law enforcement officer had reasonable grounds to believe the person
28 had been driving or was in actual physical control of a motor vehicle
29 within this state while under the influence of intoxicating liquor or
30 any drug or had been driving or was in actual physical control of a
31 motor vehicle within this state while having alcohol in his or her
32 system in a concentration in violation of RCW 46.61.503 and was under
33 the age of twenty-one, whether the person was placed under arrest, and
34 (a) whether the person refused to submit to the test or tests upon
35 request of the officer after having been informed that such refusal
36 would result in the revocation of the person's license, permit, or
37 privilege to drive, or (b) if a test or tests were administered,
38 whether the applicable requirements of this section were satisfied
39 before the administration of the test or tests, whether the person

1 submitted to the test or tests, or whether a test was administered
2 without express consent as permitted under this section, and whether
3 the test or tests indicated that the alcohol concentration of the
4 person's breath or blood was 0.08 or more if the person was age twenty-
5 one or over at the time of the arrest, or was in violation of RCW
6 46.61.502, 46.61.503, or 46.61.504 if the person was under the age of
7 twenty-one at the time of the arrest. The sworn report or report under
8 a declaration authorized by RCW 9A.72.085 submitted by a law
9 enforcement officer is prima facie evidence that the officer had
10 reasonable grounds to believe the person had been driving or was in
11 actual physical control of a motor vehicle within this state while
12 under the influence of intoxicating liquor or drugs, or both, or the
13 person had been driving or was in actual physical control of a motor
14 vehicle within this state while having alcohol in his or her system in
15 a concentration in violation of RCW 46.61.503 and was under the age of
16 twenty-one and that the officer complied with the requirements of this
17 section.

18 A hearing officer shall conduct the hearing, may issue subpoenas
19 for the attendance of witnesses and the production of documents, and
20 shall administer oaths to witnesses. The hearing officer shall not
21 issue a subpoena for the attendance of a witness at the request of the
22 person unless the request is accompanied by the fee required by RCW
23 5.56.010 for a witness in district court. The sworn report or report
24 under a declaration authorized by RCW 9A.72.085 of the law enforcement
25 officer and any other evidence accompanying the report shall be
26 admissible without further evidentiary foundation and the
27 certifications authorized by the criminal rules for courts of limited
28 jurisdiction shall be admissible without further evidentiary
29 foundation. The person may be represented by counsel, may question
30 witnesses, may present evidence, and may testify. The department shall
31 order that the suspension, revocation, or denial either be rescinded or
32 sustained.

33 (9) If the suspension, revocation, or denial is sustained after
34 such a hearing, the person whose license, privilege, or permit is
35 suspended, revoked, or denied has the right to file a petition in the
36 superior court of the county of arrest to review the final order of
37 revocation by the department in the same manner as an appeal from a
38 decision of a court of limited jurisdiction. Notice of appeal must be
39 filed within thirty days after the date the final order is served or

1 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
2 1.1, or other statutes or rules referencing de novo review, the appeal
3 shall be limited to a review of the record of the administrative
4 hearing. The appellant must pay the costs associated with obtaining
5 the record of the hearing before the hearing officer. The filing of
6 the appeal does not stay the effective date of the suspension,
7 revocation, or denial. A petition filed under this subsection must
8 include the petitioner's grounds for requesting review. Upon granting
9 petitioner's request for review, the court shall review the
10 department's final order of suspension, revocation, or denial as
11 expeditiously as possible. The review must be limited to a
12 determination of whether the department has committed any errors of
13 law. The superior court shall accept those factual determinations
14 supported by substantial evidence in the record: (a) That were
15 expressly made by the department; or (b) that may reasonably be
16 inferred from the final order of the department. The superior court
17 may reverse, affirm, or modify the decision of the department or remand
18 the case back to the department for further proceedings. The decision
19 of the superior court must be in writing and filed in the clerk's
20 office with the other papers in the case. The court shall state the
21 reasons for the decision. If judicial relief is sought for a stay or
22 other temporary remedy from the department's action, the court shall
23 not grant such relief unless the court finds that the appellant is
24 likely to prevail in the appeal and that without a stay the appellant
25 will suffer irreparable injury. If the court stays the suspension,
26 revocation, or denial it may impose conditions on such stay.

27 (10) If a person whose driver's license, permit, or privilege to
28 drive has been or will be suspended, revoked, or denied under
29 subsection (7) of this section, other than as a result of a breath or
30 blood test refusal, and who has not committed an offense (~~within the~~
31 ~~last five years~~) for which he or she was granted a deferred
32 prosecution under chapter 10.05 RCW, petitions a court for a deferred
33 prosecution on criminal charges arising out of the arrest for which
34 action has been or will be taken under subsection (7) of this section,
35 the court may direct the department to stay any actual or proposed
36 suspension, revocation, or denial for at least forty-five days but not
37 more than ninety days. If the court stays the suspension, revocation,
38 or denial, it may impose conditions on such stay. If the person is
39 otherwise eligible for licensing, the department shall issue a

1 temporary license, or extend any valid temporary license marked under
2 subsection (6) of this section, for the period of the stay. If a
3 deferred prosecution treatment plan is not recommended in the report
4 made under RCW 10.05.050, or if treatment is rejected by the court, or
5 if the person declines to accept an offered treatment plan, or if the
6 person violates any condition imposed by the court, then the court
7 shall immediately direct the department to cancel the stay and any
8 temporary marked license or extension of a temporary license issued
9 under this subsection.

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

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

24 **Sec. 4.** RCW 46.20.342 and 1993 c 501 s 6 are each amended to read
25 as follows:

26 (1) It is unlawful for any person to drive a motor vehicle in this
27 state while that person is in a suspended or revoked status or when his
28 or her privilege to drive is suspended or revoked in this or any other
29 state. Any person who has a valid Washington driver's license is not
30 guilty of a violation of this section.

31 (a) A person found to be an habitual offender under chapter 46.65
32 RCW, who violates this section while an order of revocation issued
33 under chapter 46.65 RCW prohibiting such operation is in effect, is
34 guilty of driving while license suspended or revoked in the first
35 degree, a gross misdemeanor. Upon the first such conviction, the
36 person shall be punished by imprisonment for not less than ten days.
37 Upon the second conviction, the person shall be punished by
38 imprisonment for not less than ninety days. Upon the third or

1 subsequent conviction, the person shall be punished by imprisonment for
2 not less than one hundred eighty days. If the person is also convicted
3 of the offense defined in RCW 46.61.502 or 46.61.504, when both
4 convictions arise from the same event, the minimum sentence of
5 confinement shall be not less than ninety days. The minimum sentence
6 of confinement required shall not be suspended or deferred. A
7 conviction under this subsection does not prevent a person from
8 petitioning for reinstatement as provided by RCW 46.65.080.

9 (b) A person who violates this section while an order of suspension
10 or revocation prohibiting such operation is in effect and while the
11 person is not eligible to reinstate his or her driver's license or
12 driving privilege, other than for a suspension for the reasons
13 described in (c) of this subsection, is guilty of driving while license
14 suspended or revoked in the second degree, a gross misdemeanor. This
15 subsection applies when a person's driver's license or driving
16 privilege has been suspended or revoked by reason of:

17 (i) A conviction of a felony in the commission of which a motor
18 vehicle was used;

19 (ii) A previous conviction under this section;

20 (iii) A notice received by the department from a court or diversion
21 unit as provided by RCW 46.20.265, relating to a minor who has
22 committed, or who has entered a diversion unit concerning an offense
23 relating to alcohol, legend drugs, controlled substances, or imitation
24 controlled substances;

25 (iv) A conviction of RCW 46.20.410, relating to the violation of
26 restrictions of an occupational driver's license;

27 (v) A conviction of RCW 46.20.420, relating to the operation of a
28 motor vehicle with a suspended or revoked license;

29 (vi) A conviction of RCW 46.52.020, relating to duty in case of
30 injury to or death of a person or damage to an attended vehicle;

31 (vii) A conviction of RCW 46.61.024, relating to attempting to
32 elude pursuing police vehicles;

33 (viii) A conviction of RCW 46.61.500, relating to reckless driving;

34 (ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a
35 person under the influence of intoxicating liquor or drugs;

36 (x) A conviction of RCW 46.61.520, relating to vehicular homicide;

37 (xi) A conviction of RCW 46.61.522, relating to vehicular assault;

38 (xii) A conviction of RCW 46.61.527(4), relating to reckless
39 endangerment of roadway workers;

1 ~~(xiii)~~ A conviction of RCW 46.61.530, relating to racing of
2 vehicles on highways;

3 ~~((~~xiii~~))~~ ~~(xiv)~~ A conviction of RCW 46.61.685, relating to leaving
4 children in an unattended vehicle with motor running;

5 ~~((~~xiv~~))~~ ~~(xv)~~ A conviction of RCW 46.64.048, relating to
6 attempting, aiding, abetting, coercing, and committing crimes; ~~((~~xv~~))~~
7 ~~(~~xv~~))~~ ~~(xvi)~~ An administrative action taken by the department under
8 chapter 46.20 RCW; or

9 ~~(xvii)~~ A conviction of a local law, ordinance, regulation, or
10 resolution of a political subdivision of this state, the federal
11 government, or any other state, of an offense substantially similar to
12 a violation included in this subsection.

13 (c) A person who violates this section when his or her driver's
14 license or driving privilege is, at the time of the violation,
15 suspended or revoked solely because (i) the person must furnish proof
16 of satisfactory progress in a required alcoholism or drug treatment
17 program, (ii) the person must furnish proof of financial responsibility
18 for the future as provided by chapter 46.29 RCW, (iii) the person has
19 failed to comply with the provisions of chapter 46.29 RCW relating to
20 uninsured accidents, (iv) the person has failed to respond to a notice
21 of traffic infraction, failed to appear at a requested hearing,
22 violated a written promise to appear in court, or has failed to comply
23 with the terms of a notice of traffic infraction or citation, as
24 provided in RCW 46.20.289, (v) the person has committed an offense in
25 another state that, if committed in this state, would not be grounds
26 for the suspension or revocation of the person's driver's license, or
27 (vi) the person has been suspended or revoked by reason of one or more
28 of the items listed in (b) of this subsection, but was eligible to
29 reinstate his or her driver's license or driving privilege at the time
30 of the violation, or any combination of (i) through (vi), is guilty of
31 driving while license suspended or revoked in the third degree, a
32 misdemeanor.

33 (2) Upon receiving a record of conviction of any person or upon
34 receiving an order by any juvenile court or any duly authorized court
35 officer of the conviction of any juvenile under this section, the
36 department shall:

37 (a) For a conviction of driving while suspended or revoked in the
38 first degree, as provided by subsection (1)(a) of this section, extend
39 the period of administrative revocation imposed under chapter 46.65 RCW

1 for an additional period of one year from and after the date the person
2 would otherwise have been entitled to apply for a new license or have
3 his or her driving privilege restored; or

4 (b) For a conviction of driving while suspended or revoked in the
5 second degree, as provided by subsection (1)(b) of this section, not
6 issue a new license or restore the driving privilege for an additional
7 period of one year from and after the date the person would otherwise
8 have been entitled to apply for a new license or have his or her
9 driving privilege restored; or

10 (c) Not extend the period of suspension or revocation if the
11 conviction was under subsection (1)(c) of this section. If the
12 conviction was under subsection (1) (a) or (b) of this section and the
13 court recommends against the extension and the convicted person has
14 obtained a valid driver's license, the period of suspension or
15 revocation shall not be extended.

16 **Sec. 5.** RCW 46.20.391 and 1998 c 209 s 4 and 1998 c 207 s 9 are
17 each reenacted and amended to read as follows:

18 (1) Any person licensed under this chapter who is convicted of an
19 offense relating to motor vehicles for which suspension or revocation
20 of the driver's license is mandatory, other than vehicular homicide or
21 vehicular assault, or who has had his or her license suspended under
22 RCW 46.20.3101 (2)(a) or (3)(a), may submit to the department an
23 application for an occupational driver's license. The department, upon
24 receipt of the prescribed fee and upon determining that the petitioner
25 is engaged in an occupation or trade that makes it essential that the
26 petitioner operate a motor vehicle, may issue an occupational driver's
27 license and may set definite restrictions as provided in RCW 46.20.394.
28 No person may petition for, and the department shall not issue, an
29 occupational driver's license that is effective during the first thirty
30 days of any suspension or revocation imposed either for a violation of
31 RCW 46.61.502 or 46.61.504 or ~~((pursuant to))~~ under RCW 46.20.3101
32 (2)(a) or (3)(a), or for both a violation of RCW 46.61.502 or 46.61.504
33 and under RCW 46.20.3101 (2)(a) or (3)(a) where the action arises from
34 the same incident. A person aggrieved by the decision of the
35 department on the application for an occupational driver's license may
36 request a hearing as provided by rule of the department.

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

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

5 (b) Within seven years immediately preceding the date of the
6 offense that gave rise to the present conviction or incident, the
7 applicant has not committed any of the following offenses: (i) Driving
8 or being in actual physical control of a motor vehicle while under the
9 influence of intoxicating liquor; (ii) vehicular homicide under RCW
10 46.61.520; or (iii) vehicular assault under RCW 46.61.522; and

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

13 (d) The applicant files satisfactory proof of financial
14 responsibility (~~((pursuant to))~~) under chapter 46.29 RCW.

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

23 **Sec. 6.** RCW 46.52.100 and 1998 c 204 s 1 and 1998 c 165 s 9 are
24 each reenacted and amended to read as follows:

25 Every district court, municipal court, and clerk of superior court
26 shall keep or cause to be kept a record of every traffic complaint,
27 traffic citation, notice of infraction, or other legal form of traffic
28 charge deposited with or presented to the court or a traffic violations
29 bureau, and shall keep a record of every official action by the court
30 or its traffic violations bureau in reference thereto, including but
31 not limited to a record of every conviction, forfeiture of bail,
32 judgment of acquittal, finding that a traffic infraction has been
33 committed, dismissal of a notice of infraction, and the amount of fine,
34 forfeiture, or penalty resulting from every traffic complaint,
35 citation, or notice of infraction deposited with or presented to the
36 district court, municipal court, superior court, or traffic violations
37 bureau. In the case of a record of a conviction for a violation of RCW

1 46.61.502 or 46.61.504, and notwithstanding any other provision of law,
2 the record shall be maintained by the court permanently.

3 The Monday following the conviction, forfeiture of bail, or finding
4 that a traffic infraction was committed for violation of any provisions
5 of this chapter or other law regulating the operating of vehicles on
6 highways, every magistrate of the court or clerk of the court of record
7 in which such conviction was had, bail was forfeited, or the finding
8 made shall prepare and immediately forward to the director of licensing
9 at Olympia an abstract of the record of the court covering the case(~~(7~~
10 ~~which abstract must be certified by the person so required to prepare~~
11 ~~the same to be true and correct)~~). Report need not be made of any
12 finding involving the illegal parking or standing of a vehicle.

13 The abstract must be made upon a form or forms furnished by the
14 director and shall include the name and address of the party charged,
15 the number, if any, of the party's driver's or chauffeur's license, the
16 registration number of the vehicle involved if required by the
17 director, the nature of the offense, the date of hearing, the plea, the
18 judgment, whether the offense was an alcohol-related offense as defined
19 in RCW 46.01.260(2), whether the incident that gave rise to the offense
20 charged resulted in any fatality, whether bail forfeited, whether the
21 determination that a traffic infraction was committed was contested,
22 and the amount of the fine, forfeiture, or penalty as the case may be.

23 Every court of record shall also forward a like report to the
24 director upon the conviction of any person of a felony in the
25 commission of which a vehicle was used.

26 The failure of any such judicial officer to comply with any of the
27 requirements of this section shall constitute misconduct in office and
28 shall be grounds for removal therefrom.

29 The director shall keep all abstracts received hereunder at the
30 director's office in Olympia and the same shall be open to public
31 inspection during reasonable business hours.

32 Venue in all district courts shall be before one of the two nearest
33 district judges in incorporated cities and towns nearest to the point
34 the violation allegedly occurred: PROVIDED, That in counties with
35 populations of one hundred twenty-five thousand or more such cases may
36 be tried in the county seat at the request of the defendant.

37 It shall be the duty of the officer, prosecuting attorney, or city
38 attorney signing the charge or information in any case involving a
39 charge of driving under the influence of intoxicating liquor or any

1 drug immediately to make request to the director for an abstract of
2 convictions and forfeitures which the director shall furnish.

3 **Sec. 7.** RCW 46.61.5055 and 1998 c 215 s 1, 1998 c 214 s 1, 1998 c
4 211 s 1, 1998 c 210 s 4, 1998 c 207 s 1, and 1998 c 206 s 1 are each
5 reenacted and amended to read as follows:

6 (1) A person who is convicted of a violation of RCW 46.61.502 or
7 46.61.504 and who has no prior offense within seven 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 one day nor more than one
14 year. Twenty-four consecutive hours of the imprisonment may not be
15 suspended or deferred unless the court finds that the imposition of
16 this mandatory minimum sentence would impose a substantial risk to the
17 offender's physical or mental well-being. Whenever the mandatory
18 minimum sentence is suspended or deferred, the court shall state in
19 writing the reason for granting the suspension or deferral and the
20 facts upon which the suspension or deferral is based. In lieu of the
21 mandatory minimum term of imprisonment required under this subsection
22 (1)(a)(i), the court may order not less than fifteen days of electronic
23 home monitoring. The offender shall pay the cost of electronic home
24 monitoring. The county or municipality in which the penalty is being
25 imposed shall determine the cost. The court may also require the
26 offender's electronic home monitoring device to include an alcohol
27 detection breathalyzer, and the court may restrict the amount of
28 alcohol the offender may consume during the time the offender is on
29 electronic home monitoring; and

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

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

1 conviction the department shall suspend the offender's license, permit,
2 or 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 two days nor more than one
8 year. Two consecutive days of the imprisonment may not be suspended or
9 deferred unless the court finds that the imposition of this mandatory
10 minimum sentence would impose a substantial risk to the offender's
11 physical or mental well-being. Whenever the mandatory minimum sentence
12 is suspended or deferred, the court shall state in writing the reason
13 for granting the suspension or deferral and the facts upon which the
14 suspension or deferral is based. In lieu of the mandatory minimum term
15 of imprisonment required under this subsection (1)(b)(i), the court may
16 order not less than thirty days of electronic home monitoring. The
17 offender shall pay the cost of electronic home monitoring. The county
18 or municipality in which the penalty is being imposed shall determine
19 the cost. The court may also require the offender's electronic home
20 monitoring device to include an alcohol detection breathalyzer, and the
21 court may restrict the amount of alcohol the offender may consume
22 during the time the offender is on electronic home monitoring; and

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

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

34 (iv)) By a court-ordered restriction under RCW 46.20.720.

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

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

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

3 (i) By imprisonment for not less than thirty days nor more than one
4 year and sixty days of electronic home monitoring. The offender shall
5 pay for the cost of the electronic monitoring. The county or
6 municipality where the penalty is being imposed shall determine the
7 cost. The court may also require the offender's electronic home
8 monitoring device include an alcohol detection breathalyzer, and may
9 restrict the amount of alcohol the offender may consume during the time
10 the offender is on electronic home monitoring. Thirty days of
11 imprisonment and sixty days of electronic home monitoring may not be
12 suspended or deferred unless the court finds that the imposition of
13 this mandatory minimum sentence would impose a substantial risk to the
14 offender's physical or mental well-being. Whenever the mandatory
15 minimum sentence is suspended or deferred, the court shall state in
16 writing the reason for granting the suspension or deferral and the
17 facts upon which the suspension or deferral is based; and

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

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

29 ~~(iv))~~) By a court-ordered restriction under RCW 46.20.720; or

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

34 (i) By imprisonment for not less than forty-five days nor more than
35 one year and ninety days of electronic home monitoring. The offender
36 shall pay for the cost of the electronic monitoring. The county or
37 municipality where the penalty is being imposed shall determine the
38 cost. The court may also require the offender's electronic home
39 monitoring device include an alcohol detection breathalyzer, and may

1 restrict the amount of alcohol the offender may consume during the time
2 the offender is on electronic home monitoring. Forty-five days of
3 imprisonment and ninety days of electronic home monitoring may not be
4 suspended or deferred unless the court finds that the imposition of
5 this mandatory minimum sentence would impose a substantial risk to the
6 offender's physical or mental well-being. Whenever the mandatory
7 minimum sentence is suspended or deferred, the court shall state in
8 writing the reason for granting the suspension or deferral and the
9 facts upon which the suspension or deferral is based; and

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

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

21 ~~(iv)))~~ By a court-ordered restriction under RCW 46.20.720.

22 (3) A person who is convicted of a violation of RCW 46.61.502 or
23 46.61.504 and who has two or more prior offenses within seven years
24 shall be punished as follows:

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

29 (i) By imprisonment for not less than ninety days nor more than one
30 year and one hundred twenty days of electronic home monitoring. The
31 offender shall pay for the cost of the electronic monitoring. The
32 county or municipality where the penalty is being imposed shall
33 determine the cost. The court may also require the offender's
34 electronic home monitoring device include an alcohol detection
35 breathalyzer, and may restrict the amount of alcohol the offender may
36 consume during the time the offender is on electronic home monitoring.
37 Ninety days of imprisonment and one hundred twenty days of electronic
38 home monitoring may not be suspended or deferred unless the court finds
39 that the imposition of this mandatory minimum sentence would impose a

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

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

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

17 ~~(iv)))~~ By a court-ordered restriction under RCW 46.20.720; or

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

22 (i) By imprisonment for not less than one hundred twenty days nor
23 more than one year and one hundred fifty days of electronic home
24 monitoring. The offender shall pay for the cost of the electronic
25 monitoring. The county or municipality where the penalty is being
26 imposed shall determine the cost. The court may also require the
27 offender's electronic home monitoring device include an alcohol
28 detection breathalyzer, and may restrict the amount of alcohol the
29 offender may consume during the time the offender is on electronic home
30 monitoring. One hundred twenty days of imprisonment and one hundred
31 fifty days of electronic home monitoring may not be suspended or
32 deferred unless the court finds that the imposition of this mandatory
33 minimum sentence would impose a substantial risk to the offender's
34 physical or mental well-being. Whenever the mandatory minimum sentence
35 is suspended or deferred, the court shall state in writing the reason
36 for granting the suspension or deferral and the facts upon which the
37 suspension or deferral is based; and

38 (ii) By a fine of not less than one thousand five hundred dollars
39 nor more than five thousand dollars. One thousand five hundred dollars

1 of the fine may not be suspended or deferred unless the court finds the
2 offender to be indigent; and

3 ~~(iii) ((By revocation of the offender's license or permit to drive,~~
4 ~~or suspension of any nonresident privilege to drive, for a period of~~
5 ~~four years. The period of license, permit, or privilege revocation may~~
6 ~~not be suspended. The court shall notify the department of licensing~~
7 ~~of the conviction, and upon receiving notification of the conviction~~
8 ~~the department shall revoke the offender's license, permit, or~~
9 ~~privilege; and~~

10 (iv))) By a court-ordered restriction under RCW 46.20.720.

11 (4) In exercising its discretion in setting penalties within the
12 limits allowed by this section, the court shall particularly consider
13 the following:

14 (a) Whether the person's driving at the time of the offense was
15 responsible for injury or damage to another or another's property; and

16 (b) Whether the person was driving or in physical control of a
17 vehicle with one or more passengers at the time of the offense.

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

20 (6) The license, permit, or nonresident privilege of a person
21 convicted of driving or being in physical control of a motor vehicle
22 while under the influence of intoxicating liquor or drugs must:

23 (a) If the person's alcohol concentration was less than 0.15, or if
24 for reasons other than the person's refusal to take a test offered
25 under RCW 46.20.308 there is no test result indicating the person's
26 alcohol concentration:

27 (i) Where there has been no prior offense within seven years, be
28 suspended or denied by the department for ninety days;

29 (ii) Where there has been one prior offense within seven years, be
30 revoked or denied by the department for two years; or

31 (iii) Where there have been two or more prior offenses within seven
32 years, be revoked or denied by the department for three years;

33 (b) If the person's alcohol concentration was at least 0.15, or if
34 by reason of the person's refusal to take a test offered under RCW
35 46.20.308 there is no test result indicating the person's alcohol
36 concentration:

37 (i) Where there has been no prior offense within seven years, be
38 revoked or denied by the department for one year;

1 (ii) Where there has been one prior offense within seven years, be
2 revoked or denied by the department for nine hundred days; or

3 (iii) Where there have been two or more prior offenses within seven
4 years, be revoked or denied by the department for four years.

5 For purposes of this subsection, the department shall refer to the
6 driver's record maintained under RCW 46.52.120 when determining the
7 existence of prior offenses.

8 (7) After expiration of any period of suspension ((or)),
9 revocation, or denial of the offender's license, permit, or privilege
10 to drive required by this section, the department shall place the
11 offender's driving privilege in probationary status pursuant to RCW
12 46.20.355.

13 ((+7)) (8)(a) In addition to any nonsuspendable and nondeferrable
14 jail sentence required by this section, whenever the court imposes less
15 than one year in jail, the court shall also suspend but shall not defer
16 a period of confinement for a period not exceeding five years. The
17 court shall impose conditions of probation that include: (i) Not
18 driving a motor vehicle within this state without a valid license to
19 drive and proof of financial responsibility for the future; (ii) not
20 driving a motor vehicle within this state while having an alcohol
21 concentration of 0.08 or more within two hours after driving; and (iii)
22 not refusing to submit to a test of his or her breath or blood to
23 determine alcohol concentration upon request of a law enforcement
24 officer who has reasonable grounds to believe the person was driving or
25 was in actual physical control of a motor vehicle within this state
26 while under the influence of intoxicating liquor. The court may impose
27 conditions of probation that include nonrepetition, installation of an
28 ignition interlock or other biological or technical device on the
29 probationer's motor vehicle, alcohol or drug treatment, supervised
30 probation, or other conditions that may be appropriate. The sentence
31 may be imposed in whole or in part upon violation of a condition of
32 probation during the suspension period.

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

37 (c) For each incident involving a violation of a mandatory
38 condition of probation imposed under this subsection, the license,
39 permit, or privilege to drive of the person shall be suspended by the

1 court for thirty days or, if such license, permit, or privilege to
2 drive already is suspended, revoked, or denied at the time the finding
3 of probation violation is made, the suspension, revocation, or denial
4 then in effect shall be extended by thirty days. The court shall
5 notify the department of any suspension, revocation, or denial or any
6 extension of a suspension, revocation, or denial imposed under this
7 subsection.

8 ((+8+)) (9) For purposes of this section:

9 (a) "Electronic home monitoring" shall not be considered
10 confinement as defined in RCW 9.94A.030;

11 (b) A "prior offense" means any of the following:

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

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

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

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

20 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
21 9A.36.050 or an equivalent local ordinance, if the conviction is the
22 result of a charge that was originally filed as a violation of RCW
23 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
24 46.61.520 or 46.61.522;

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

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

31 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
32 prosecution for a violation of RCW 46.61.5249, or an equivalent local
33 ordinance, if the charge under which the deferred prosecution was
34 granted was originally filed as a violation of RCW 46.61.502 or
35 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
36 46.61.522; and

37 (c) "Within seven years" means that the arrest for a prior offense
38 occurred within seven years of the arrest for the current offense.

1 **Sec. 8.** RCW 46.65.060 and 1985 c 101 s 2 are each amended to read
2 as follows:

3 If the department finds that such person is not an habitual
4 offender under this chapter, the proceeding shall be dismissed, but if
5 the department finds that such person is an habitual offender, the
6 department shall revoke the operator's license for a period of ((five))
7 seven years: PROVIDED, That the department may stay the date of the
8 revocation if it finds that the traffic offenses upon which it is based
9 were caused by or are the result of alcoholism and/or drug addiction as
10 evaluated by a program approved by the department of social and health
11 services, and that since his or her last offense he or she has
12 undertaken and followed a course of treatment for alcoholism and/or
13 drug treatment in a program approved by the department of social and
14 health services; such stay shall be subject to terms and conditions as
15 are deemed reasonable by the department. Said stay shall continue as
16 long as there is no further conviction for any of the offenses listed
17 in RCW 46.65.020(1). Upon a subsequent conviction for any offense
18 listed in RCW 46.65.020(1) or violation of any of the terms or
19 conditions of the original stay order, the stay shall be removed and
20 the department shall revoke the operator's license for a period of
21 ((five)) seven years.

--- END ---