
SENATE BILL 5443

State of Washington

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1999 Regular Session

By Senators Kline, Rossi, Patterson, Johnson, Hargrove, Brown, Kohl-Welles, Fraser, Costa, Spanel, Winsley and Oke

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1 AN ACT Relating to waiver of administrative alcohol or drug-related
2 hearing fees due to indigency; and reenacting and amending RCW
3 46.20.308.

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

5 **Sec. 1.** RCW 46.20.308 and 1998 c 213 s 1, 1998 c 209 s 1, 1998 c
6 207 s 7, and 1998 c 41 s 4 are each reenacted and amended to read as
7 follows:

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

17 (2) The test or tests of breath shall be administered at the
18 direction of a law enforcement officer having reasonable grounds to
19 believe the person to have been driving or in actual physical control

1 of a motor vehicle within this state while under the influence of
2 intoxicating liquor or any drug or the person to have been driving or
3 in actual physical control of a motor vehicle while having alcohol in
4 a concentration in violation of RCW 46.61.503 in his or her system and
5 being under the age of twenty-one. However, in those instances where
6 the person is incapable due to physical injury, physical incapacity, or
7 other physical limitation, of providing a breath sample or where the
8 person is being treated in a hospital, clinic, doctor's office,
9 emergency medical vehicle, ambulance, or other similar facility in
10 which a breath testing instrument is not present or where the officer
11 has reasonable grounds to believe that the person is under the
12 influence of a drug, a blood test shall be administered by a qualified
13 person as provided in RCW 46.61.506(4). The officer shall inform the
14 person of his or her right to refuse the breath or blood test, and of
15 his or her right to have additional tests administered by any qualified
16 person of his or her choosing as provided in RCW 46.61.506. The
17 officer shall warn the driver that:

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

20 (b) His or her license, permit, or privilege to drive will be
21 suspended, revoked, or denied if the test is administered and the test
22 indicates the alcohol concentration of the person's breath or blood is
23 0.08 or more, in the case of a person age twenty-one or over, or in
24 violation of RCW 46.61.502, 46.61.503, or 46.61.504 in the case of a
25 person under age twenty-one; and

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

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

37 (4) Any person who is dead, unconscious, or who is otherwise in a
38 condition rendering him or her incapable of refusal, shall be deemed
39 not to have withdrawn the consent provided by subsection (1) of this

1 section and the test or tests may be administered, subject to the
2 provisions of RCW 46.61.506, and the person shall be deemed to have
3 received the warnings required under subsection (2) of this section.

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

9 (6) If, after arrest and after the other applicable conditions and
10 requirements of this section have been satisfied, a test or tests of
11 the person's blood or breath is administered and the test results
12 indicate that the alcohol concentration of the person's breath or blood
13 is 0.08 or more if the person is age twenty-one or over, or is in
14 violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is
15 under the age of twenty-one, or the person refuses to submit to a test,
16 the arresting officer or other law enforcement officer at whose
17 direction any test has been given, or the department, where applicable,
18 if the arrest results in a test of the person's blood, shall:

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

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

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

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

37 (e) Immediately notify the department of the arrest and transmit to
38 the department within seventy-two hours, except as delayed as the

1 result of a blood test, a sworn report or report under a declaration
2 authorized by RCW 9A.72.085 that states:

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

9 (ii) That after receipt of the warnings required by subsection (2)
10 of this section the person refused to submit to a test of his or her
11 blood or breath, or a test was administered and the results indicated
12 that the alcohol concentration of the person's breath or blood was 0.08
13 or more if the person is age twenty-one or over, or was in violation of
14 RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age
15 of twenty-one; and

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

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

27 (8) A person receiving notification under subsection (6)(b) of this
28 section may, within thirty days after the notice has been given,
29 request in writing a formal hearing before the department. The person
30 shall pay a fee of one hundred dollars as part of the request. If the
31 request is mailed, it must be postmarked within thirty days after
32 receipt of the notification. Upon timely receipt of such a request for
33 a formal hearing, including receipt of the required one hundred dollar
34 fee, the department shall afford the person an opportunity for a
35 hearing. The department may waive the required one hundred dollar fee
36 if the person is an indigent as defined in RCW 10.101.010. Except as
37 otherwise provided in this section, the hearing is subject to and shall
38 be scheduled and conducted in accordance with RCW 46.20.329 and
39 46.20.332. The hearing shall be conducted in the county of the arrest,

1 except that all or part of the hearing may, at the discretion of the
2 department, be conducted by telephone or other electronic means. The
3 hearing shall be held within sixty days following the arrest or
4 following the date notice has been given in the event notice is given
5 by the department following a blood test, unless otherwise agreed to by
6 the department and the person, in which case the action by the
7 department shall be stayed, and any valid temporary license marked
8 under subsection (6)(c) of this section extended, if the person is
9 otherwise eligible for licensing. For the purposes of this section,
10 the scope of the hearing shall cover the issues of whether a law
11 enforcement officer had reasonable grounds to believe the person had
12 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 in violation of RCW 46.61.503 and was under
17 the age of twenty-one, whether the person was placed under arrest, and
18 (a) whether the person refused to submit to the test or tests upon
19 request of the officer after having been informed that such refusal
20 would result in the revocation of the person's license, permit, or
21 privilege to drive, or (b) if a test or tests were administered,
22 whether the applicable requirements of this section were satisfied
23 before the administration of the test or tests, whether the person
24 submitted to the test or tests, or whether a test was administered
25 without express consent as permitted under this section, and whether
26 the test or tests indicated that the alcohol concentration of the
27 person's breath or blood was 0.08 or more if the person was age twenty-
28 one or over at the time of the arrest, or was in violation of RCW
29 46.61.502, 46.61.503, or 46.61.504 if the person was under the age of
30 twenty-one at the time of the arrest. The sworn report or report under
31 a declaration authorized by RCW 9A.72.085 submitted by a law
32 enforcement officer is prima facie evidence that the officer had
33 reasonable grounds to believe the person had been driving or was in
34 actual physical control of a motor vehicle within this state while
35 under the influence of intoxicating liquor or drugs, or both, or the
36 person had been driving or was in actual physical control of a motor
37 vehicle within this state while having alcohol in his or her system in
38 a concentration in violation of RCW 46.61.503 and was under the age of

1 twenty-one and that the officer complied with the requirements of this
2 section.

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

18 (9) If the suspension, revocation, or denial is sustained after
19 such a hearing, the person whose license, privilege, or permit is
20 suspended, revoked, or denied has the right to file a petition in the
21 superior court of the county of arrest to review the final order of
22 revocation by the department in the same manner as an appeal from a
23 decision of a court of limited jurisdiction. Notice of appeal must be
24 filed within thirty days after the date the final order is served or
25 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
26 1.1, or other statutes or rules referencing de novo review, the appeal
27 shall be limited to a review of the record of the administrative
28 hearing. The appellant must pay the costs associated with obtaining
29 the record of the hearing before the hearing officer. The filing of
30 the appeal does not stay the effective date of the suspension,
31 revocation, or denial. A petition filed under this subsection must
32 include the petitioner's grounds for requesting review. Upon granting
33 petitioner's request for review, the court shall review the
34 department's final order of suspension, revocation, or denial as
35 expeditiously as possible. The review must be limited to a
36 determination of whether the department has committed any errors of
37 law. The superior court shall accept those factual determinations
38 supported by substantial evidence in the record: (a) That were
39 expressly made by the department; or (b) that may reasonably be

1 inferred from the final order of the department. The superior court
2 may reverse, affirm, or modify the decision of the department or remand
3 the case back to the department for further proceedings. The decision
4 of the superior court must be in writing and filed in the clerk's
5 office with the other papers in the case. The court shall state the
6 reasons for the decision. If judicial relief is sought for a stay or
7 other temporary remedy from the department's action, the court shall
8 not grant such relief unless the court finds that the appellant is
9 likely to prevail in the appeal and that without a stay the appellant
10 will suffer irreparable injury. If the court stays the suspension,
11 revocation, or denial it may impose conditions on such stay.

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

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

1 denial reinstated. If the deferred prosecution is completed, the stay
2 shall be lifted and the suspension, revocation, or denial canceled.

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

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