
SENATE BILL 6733

State of Washington

56th Legislature

2000 Regular Session

By Senators Goings and Rasmussen

Read first time 01/25/2000. Referred to Committee on Judiciary.

1 AN ACT Relating to the refusal to take a breathalyzer test;
2 amending RCW 46.63.020; reenacting and amending RCW 46.20.308; adding
3 a new section to chapter 46.61 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.61 RCW
6 to read as follows:

7 (1) A person is guilty of refusing to submit to a breathalyzer test
8 if the person is requested to take a breathalyzer test after arrest by
9 a law enforcement officer having reasonable grounds to believe the
10 person to have been driving or in actual physical control of a motor
11 vehicle within this state or operating a vessel while under the
12 influence of intoxicating liquor or any drug and the person refuses to
13 submit to a test or tests of his or her breath or blood after being
14 informed by the officer of the warnings in RCW 46.20.308(2). A person
15 is guilty of refusing to submit to a breathalyzer test if the person is
16 requested to take a breathalyzer test after arrest by a law enforcement
17 officer having reasonable grounds to believe the person to have been
18 driving or in actual physical control of a motor vehicle while having
19 alcohol in a concentration in violation of RCW 46.61.503 in his or her

1 system and being under the age of twenty-one and the person refuses to
2 submit to a test or tests of his or her breath or blood after being
3 informed by the officer of the warnings in RCW 46.20.308(2).

4 (2) A person convicted of a violation of this section who has no
5 prior offense within seven years is guilty of a misdemeanor. A person
6 convicted of a violation of this section who has at least one such
7 prior conviction within seven years is guilty of a gross misdemeanor.

8 (3) A violation of this section may be prosecuted in the
9 jurisdiction where the defendant drove, was in physical control of the
10 motor vehicle, or operated the vessel, or in the jurisdiction where the
11 refusal occurred.

12 **Sec. 2.** RCW 46.20.308 and 1999 c 331 s 2 and 1999 c 274 s 2 are
13 each reenacted and amended to read as follows:

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

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

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

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

7 (b) His or her license, permit, or privilege to drive will be
8 suspended, revoked, or denied if the test is administered and the test
9 indicates the alcohol concentration of the person's breath or blood is
10 0.08 or more, in the case of a person age twenty-one or over, or in
11 violation of RCW 46.61.502, 46.61.503, or 46.61.504 in the case of a
12 person under age twenty-one; ~~((and))~~

13 (c) His or her refusal to take the test may be used in a criminal
14 trial;

15 (d) Washington law requires the person to take a test or tests of
16 the person's breath or blood to determine if the person is under the
17 influence of or affected by alcohol or any drug, or a combination
18 thereof;

19 (e) Refusal to take the test or tests of the person's breath or
20 blood is a crime; and

21 (f) He or she has the right to have additional tests administered
22 by any qualified person of his or her choosing as provided in RCW
23 46.61.506.

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

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

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

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

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

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

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

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

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

38 (i) That the officer had reasonable grounds to believe the arrested
39 person had been driving or was in actual physical control of a motor

1 vehicle within this state while under the influence of intoxicating
2 liquor or drugs, or both, or was under the age of twenty-one years and
3 had been driving or was in actual physical control of a motor vehicle
4 while having an alcohol concentration in violation of RCW 46.61.503;

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

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

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

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

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

37 A hearing officer shall conduct the hearing, may issue subpoenas
38 for the attendance of witnesses and the production of documents, and
39 shall administer oaths to witnesses. The hearing officer shall not

1 issue a subpoena for the attendance of a witness at the request of the
2 person unless the request is accompanied by the fee required by RCW
3 5.56.010 for a witness in district court. The sworn report or report
4 under a declaration authorized by RCW 9A.72.085 of the law enforcement
5 officer and any other evidence accompanying the report shall be
6 admissible without further evidentiary foundation and the
7 certifications authorized by the criminal rules for courts of limited
8 jurisdiction shall be admissible without further evidentiary
9 foundation. The person may be represented by counsel, may question
10 witnesses, may present evidence, and may testify. The department shall
11 order that the suspension, revocation, or denial either be rescinded or
12 sustained.

13 (9) If the suspension, revocation, or denial is sustained after
14 such a hearing, the person whose license, privilege, or permit is
15 suspended, revoked, or denied has the right to file a petition in the
16 superior court of the county of arrest to review the final order of
17 revocation by the department in the same manner as an appeal from a
18 decision of a court of limited jurisdiction. Notice of appeal must be
19 filed within thirty days after the date the final order is served or
20 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
21 1.1, or other statutes or rules referencing de novo review, the appeal
22 shall be limited to a review of the record of the administrative
23 hearing. The appellant must pay the costs associated with obtaining
24 the record of the hearing before the hearing officer. The filing of
25 the appeal does not stay the effective date of the suspension,
26 revocation, or denial. 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 as
30 expeditiously as possible. The review must be limited to a
31 determination of whether the department has committed any errors of
32 law. The superior court shall accept those factual determinations
33 supported by substantial evidence in the record: (a) That were
34 expressly made by the department; or (b) that may reasonably be
35 inferred from the final order of the department. The superior court
36 may reverse, affirm, or modify the decision of the department or remand
37 the case back to the department for further proceedings. The decision
38 of the superior court must be in writing and filed in the clerk's
39 office with the other papers in the case. The court shall state the

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

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

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

37 (11) When it has been finally determined under the procedures of
38 this section that a nonresident's privilege to operate a motor vehicle
39 in this state has been suspended, revoked, or denied, the department

1 shall give information in writing of the action taken to the motor
2 vehicle administrator of the state of the person's residence and of any
3 state in which he or she has a license.

4 **Sec. 3.** RCW 46.63.020 and 1999 c 86 s 6 are each amended to read
5 as follows:

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

14 (1) RCW 46.09.120(2) relating to the operation of a nonhighway
15 vehicle while under the influence of intoxicating liquor or a
16 controlled substance;

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

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

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

22 (5) Chapter 46.12 RCW relating to certificates of ownership and
23 registration and markings indicating that a vehicle has been destroyed
24 or declared a total loss;

25 (6) RCW 46.16.010 relating to initial registration of motor
26 vehicles;

27 (7) RCW 46.16.011 relating to permitting unauthorized persons to
28 drive;

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

30 (9) RCW 46.16.381(2) relating to knowingly providing false
31 information in conjunction with an application for a special placard or
32 license plate for disabled persons' parking;

33 (10) RCW 46.20.005 relating to driving without a valid driver's
34 license;

35 (11) RCW 46.20.091 relating to false statements regarding a
36 driver's license or instruction permit;

37 (12) RCW ((46.20.336)) 46.20.0921 relating to the unlawful
38 possession and use of a driver's license;

1 (13) RCW 46.20.342 relating to driving with a suspended or revoked
2 license or status;

3 (14) RCW 46.20.410 relating to the violation of restrictions of an
4 occupational driver's license;

5 (15) RCW (~~46.20.420~~) 46.20.345 relating to the operation of a
6 motor vehicle with a suspended or revoked license;

7 (16) RCW 46.20.740 relating to operation of a motor vehicle without
8 an ignition interlock device in violation of a license notation that
9 the device is required;

10 (17) RCW 46.20.750 relating to assisting another person to start a
11 vehicle equipped with an ignition interlock device;

12 (18) RCW 46.25.170 relating to commercial driver's licenses;

13 (19) Chapter 46.29 RCW relating to financial responsibility;

14 (20) RCW 46.30.040 relating to providing false evidence of
15 financial responsibility;

16 (21) RCW 46.37.435 relating to wrongful installation of
17 sunscreening material;

18 (22) RCW 46.44.180 relating to operation of mobile home pilot
19 vehicles;

20 (23) RCW 46.48.175 relating to the transportation of dangerous
21 articles;

22 (24) RCW 46.52.010 relating to duty on striking an unattended car
23 or other property;

24 (25) RCW 46.52.020 relating to duty in case of injury to or death
25 of a person or damage to an attended vehicle;

26 (26) RCW 46.52.090 relating to reports by repairmen, storagemen,
27 and appraisers;

28 (27) RCW 46.52.130 relating to confidentiality of the driving
29 record to be furnished to an insurance company, an employer, and an
30 alcohol/drug assessment or treatment agency;

31 (28) RCW 46.55.020 relating to engaging in the activities of a
32 registered tow truck operator without a registration certificate;

33 (29) RCW 46.55.035 relating to prohibited practices by tow truck
34 operators;

35 (30) RCW 46.61.015 relating to obedience to police officers,
36 flagmen, or fire fighters;

37 (31) RCW 46.61.020 relating to refusal to give information to or
38 cooperate with an officer;

1 (32) RCW 46.61.022 relating to failure to stop and give
2 identification to an officer;

3 (33) RCW 46.61.024 relating to attempting to elude pursuing police
4 vehicles;

5 (34) RCW 46.61.500 relating to reckless driving;

6 (35) RCW 46.61.502 and 46.61.504 relating to persons under the
7 influence of intoxicating liquor or drugs;

8 (36) RCW 46.61.503 relating to a person under age twenty-one
9 driving a motor vehicle after consuming alcohol;

10 (37) Section 1 of this act relating to refusing to submit to a
11 breathalyzer test;

12 (38) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

13 ~~((+38+))~~ (39) RCW 46.61.522 relating to vehicular assault;

14 ~~((+39+))~~ (40) RCW 46.61.5249 relating to first degree negligent
15 driving;

16 ~~((+40+))~~ (41) RCW 46.61.527(4) relating to reckless endangerment of
17 roadway workers;

18 ~~((+41+))~~ (42) RCW 46.61.530 relating to racing of vehicles on
19 highways;

20 ~~((+42+))~~ (43) RCW 46.61.685 relating to leaving children in an
21 unattended vehicle with the motor running;

22 ~~((+43+))~~ (44) RCW 46.64.010 relating to unlawful cancellation of or
23 attempt to cancel a traffic citation;

24 ~~((+44+))~~ (45) RCW 46.64.048 relating to attempting, aiding,
25 abetting, coercing, and committing crimes;

26 ~~((+45+))~~ (46) Chapter 46.65 RCW relating to habitual traffic
27 offenders;

28 ~~((+46+))~~ (47) RCW 46.68.010 relating to false statements made to
29 obtain a refund;

30 ~~((+47+))~~ (48) Chapter 46.70 RCW relating to unfair motor vehicle
31 business practices, except where that chapter provides for the
32 assessment of monetary penalties of a civil nature;

33 ~~((+48+))~~ (49) Chapter 46.72 RCW relating to the transportation of
34 passengers in for hire vehicles;

35 ~~((+49+))~~ (50) RCW 46.72A.060 relating to limousine carrier
36 insurance;

37 ~~((+50+))~~ (51) RCW 46.72A.070 relating to operation of a limousine
38 without a vehicle certificate;

1 (~~(51)~~) (52) RCW 46.72A.080 relating to false advertising by a
2 limousine carrier;
3 (~~(52)~~) (53) Chapter 46.80 RCW relating to motor vehicle wreckers;
4 (~~(53)~~) (54) Chapter 46.82 RCW relating to driver's training
5 schools;
6 (~~(54)~~) (55) RCW 46.87.260 relating to alteration or forgery of a
7 cab card, letter of authority, or other temporary authority issued
8 under chapter 46.87 RCW;
9 (~~(55)~~) (56) RCW 46.87.290 relating to operation of an
10 unregistered or unlicensed vehicle under chapter 46.87 RCW.

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