
Judiciary Committee

HB 2895

Title: An act relating to periods of license revocation, suspension, and denial imposed under RCW 46.20.3101 and 46.61.5055.

Brief Description: Crediting DUI offenders with time already suspended.

Sponsors: Representatives Hunt and Sullivan.

Brief Summary of Bill

- Allows cross-crediting of periods of driver's license suspension in some cases when a single DUI incident gives rise to overlapping administrative and criminal suspensions.
- Limits this crediting provision to DUI cases in which the driver has no prior DUIs and has an alcohol concentration of less than 0.15.

Hearing Date: 1/29/04

Staff: Bill Perry (786-7123).

Background:

A person who is arrested for driving while under the influence (DUI) is at risk for the loss of his or her driver's license in either or both of two ways. The person may lose his or her license through an administrative process and/or through a criminal conviction.

Implied Consent and Administrative "Per Se" Violations.

Any person who operates a motor vehicle in this state is deemed to have given consent for a blood or breath alcohol concentration (BAC) test if he or she is arrested for (DUI). This provision in the state's motor vehicle code is known as the implied consent law.

If an arresting officer has reasonable grounds to believe a driver has committed DUI, the officer may request that the driver take a BAC test. If the driver refuses the test, his or her driver's license will be administratively suspended or revoked by the Department of Licensing (DOL). This refusal is an implied consent law violation. If the driver submits to the test and fails it, i.e., registers above the legal BAC limit, the DOL will also administratively suspend or revoke the license. This failure is referred to as an administrative "per se" violation.

A so-called per se violation of the DUI law consists of operating a motor vehicle while having a BAC of 0.08 or more for persons over the age of 21, or having a BAC of 0.02 or more for

younger drivers. (The BAC measurement is of either grams of alcohol per 210 liters of breath, or grams of alcohol per 100 milliliters of blood.)

The length of the suspension or revocation is generally longer for a refusal than for a failure of the BAC test. The period of suspension or revocation escalates with successive incidents for refusals and failures as follows:

- For a first refusal - one year;
- For a second or subsequent refusal - two years;
- For a first failure - 90 days; or
- For a second or subsequent failure - two years.

In addition to causing longer periods of license loss, a refusal by a person with any prior administrative per se or implied consent violations causes the period of administrative loss to run consecutively to any license loss that results from a criminal conviction for the same incident.

The administrative sanctions against a person's driving privileges are completely independent of the outcome of any criminal prosecution that may arise out of the same incident. The burden of proof in an administrative action is a simple preponderance of the evidence, whereas in a criminal case it is beyond a reasonable doubt. Therefore, it is possible for a person to lose his or her license administratively and still be found not guilty of DUI in a criminal prosecution.

Driving While Under the Influence.

The crime of DUI may be committed in either of two ways. A per se criminal violation is committed by anyone who drives with a BAC above the legal limit. However, regardless of a person's BAC level, he or she is also guilty of DUI if he or she drives while "under the influence," that is, if the driver is impaired to any appreciable degree by alcohol or drugs.

The DUI law contains a system of escalating penalties that increase with the number of past offenses and the BAC level of the offender at the time of the current offense. In addition to mandatory periods of incarceration, DUI convictions carry mandatory loss of driving privileges, mandatory fines, mandatory alcohol abuse screening, and, in the case of offenders with high BACs or with repeat offenses, mandatory use of ignition interlocks upon restoration of driving privileges.

DUI is a gross misdemeanor that carries a maximum jail sentence of one year and a maximum fine of \$5,000. For each level of the offense, however, a mandatory minimum jail sentence and fine must be imposed. The minimum jail sentences range from one day in jail *or* 15 days of electronic home detention, to 120 days in jail *and* 150 days of electronic home monitoring. The minimum fines range from \$350 to \$1,500.

Periods of license loss range as follows for first, second and third offenses within seven years:

- If the driver's BAC was below 0.15, or there was no BAC for reasons other than the driver's refusal to take the test: 90 days, two years, and three years; or
- If the driver's BAC was at or above 0.15, or there was no BAC because of refusal: One year, 900 days; and four years.

Summary of Bill:

If a person's license is being administratively suspended for the first time, and he or she registered less than 0.15 on the BAC test, then any period of suspension or revocation already served for a criminal DUI conviction arising out of the same incident will be credited against the administrative suspension.

If the same person's administrative sanction occurs before the criminal sanction, then the period of administrative loss already served will be credited towards the criminal period.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.