
HOUSE BILL 1794

State of Washington 58th Legislature 2003 Regular Session

By Representatives Rockefeller, Lovick, Moeller, Kirby and Wallace

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1 AN ACT Relating to implied consent for a blood or breath test of a
2 person involved in a motor vehicle accident; and reenacting and
3 amending RCW 46.20.308.

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

5 **Sec. 1.** RCW 46.20.308 and 1999 c 331 s 2 and 1999 c 274 s 2 are
6 each reenacted and amended to read as follows:

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

18 (2)(a) The test or tests of breath shall be administered at the
19 direction of a law enforcement officer having reasonable grounds to

1 believe the person to have been: (i) Driving or in actual physical
2 control of a motor vehicle within this state while under the influence
3 of intoxicating liquor or any drug ((or the person to have been)); (ii)
4 driving or in actual physical control of a motor vehicle while having
5 alcohol in a concentration in violation of RCW 46.61.503 in his or her
6 system and being under the age of twenty-one; or (iii) involved in an
7 accident in which there has been a death or a serious bodily injury to
8 another person.

9 (b) However, in those instances where the person is incapable due
10 to physical injury, physical incapacity, or other physical limitation,
11 of providing a breath sample or where the person is being treated in a
12 hospital, clinic, doctor's office, emergency medical vehicle,
13 ambulance, or other similar facility in which a breath testing
14 instrument is not present or where the officer has reasonable grounds
15 to believe that the person is under the influence of a drug, a blood
16 test shall be administered by a qualified person as provided in RCW
17 46.61.506(4).

18 (c) The officer shall inform the person of his or her right to
19 refuse the breath or blood test, and of his or her right to have
20 additional tests administered by any qualified person of his or her
21 choosing as provided in RCW 46.61.506. The officer shall warn the
22 driver that:

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

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

31 ((+c)) (iii) His or her refusal to take the test may be used in a
32 criminal trial.

33 (3) Except as provided in this section, the test administered shall
34 be of the breath only. If an individual is unconscious or is ~~((under~~
35 ~~arrest for the crime of vehicular homicide as provided in RCW 46.61.520~~
36 ~~or vehicular assault as provided in RCW 46.61.522, or if an individual~~
37 ~~is under arrest for the crime of driving while under the influence of~~
38 ~~intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest~~

1 ~~results from~~) involved in an accident in which there has been a death
2 or a serious bodily injury to another person, a breath or blood test
3 may be administered without the consent of the individual (~~se~~
4 ~~arrested~~)).

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

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

16 (6) If, (~~after arrest and~~) after the (~~other~~) applicable
17 conditions and requirements of this section have been satisfied, a test
18 or tests of the person's blood or breath is administered and the test
19 results indicate that the alcohol concentration of the person's breath
20 or blood is 0.08 or more if the person is age twenty-one or over, or is
21 in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is
22 under the age of twenty-one, or the person refuses to submit to a test,
23 the arresting officer or other law enforcement officer at whose
24 direction any test has been given shall arrest the person if the person
25 is not under arrest, and the arresting officer or other law enforcement
26 officer, or the department, where applicable, if the arrest results in
27 a test of the person's blood, shall:

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

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

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

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

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

13 (i) That the officer had reasonable grounds to believe the arrested
14 person: (A) Had been driving or was in actual physical control of a
15 motor vehicle within this state while under the influence of
16 intoxicating liquor or drugs, or both(~~(, or~~)); (B) was under the age of
17 twenty-one years and had been driving or was in actual physical control
18 of a motor vehicle while having an alcohol concentration in violation
19 of RCW 46.61.503; or (C) was involved in an accident in which there has
20 been a death or a serious bodily injury to another person;

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

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

29 (7) The department of licensing, upon the receipt of a sworn report
30 or report under a declaration authorized by RCW 9A.72.085 under
31 subsection (6)(e) of this section, shall suspend, revoke, or deny the
32 person's license, permit, or privilege to drive or any nonresident
33 operating privilege, as provided in RCW 46.20.3101, such suspension,
34 revocation, or denial to be effective beginning sixty days from the
35 date of arrest or from the date notice has been given in the event
36 notice is given by the department following a blood test, or when
37 sustained at a hearing pursuant to subsection (8) of this section,
38 whichever occurs first.

1 (8) A person receiving notification under subsection (6)(b) of this
2 section may, within thirty days after the notice has been given,
3 request in writing a formal hearing before the department. The person
4 shall pay a fee of one hundred dollars as part of the request. If the
5 request is mailed, it must be postmarked within thirty days after
6 receipt of the notification. Upon timely receipt of such a request for
7 a formal hearing, including receipt of the required one hundred dollar
8 fee, the department shall afford the person an opportunity for a
9 hearing. The department may waive the required one hundred dollar fee
10 if the person is an indigent as defined in RCW 10.101.010. Except as
11 otherwise provided in this section, the hearing is subject to and shall
12 be scheduled and conducted in accordance with RCW 46.20.329 and
13 46.20.332. The hearing shall be conducted in the county of the arrest,
14 except that all or part of the hearing may, at the discretion of the
15 department, be conducted by telephone or other electronic means. The
16 hearing shall be held within sixty days following the arrest or
17 following the date notice has been given in the event notice is given
18 by the department following a blood test, unless otherwise agreed to by
19 the department and the person, in which case the action by the
20 department shall be stayed, and any valid temporary license marked
21 under subsection (6)(c) of this section extended, if the person is
22 otherwise eligible for licensing. For the purposes of this section,
23 the scope of the hearing shall cover the issues of whether a law
24 enforcement officer had reasonable grounds to believe the person had
25 been driving or was in actual physical control of a motor vehicle
26 within this state while under the influence of intoxicating liquor or
27 any drug or had been driving or was in actual physical control of a
28 motor vehicle within this state while having alcohol in his or her
29 system in a concentration in violation of RCW 46.61.503 and was under
30 the age of twenty-one, whether the person was placed under arrest, and
31 (a) whether the person refused to submit to the test or tests upon
32 request of the officer after having been informed that such refusal
33 would result in the revocation of the person's license, permit, or
34 privilege to drive, or (b) if a test or tests were administered,
35 whether the applicable requirements of this section were satisfied
36 before the administration of the test or tests, whether the person
37 submitted to the test or tests, or whether a test was administered
38 without express consent as permitted under this section, and whether

1 the test or tests indicated that the alcohol concentration of the
2 person's breath or blood was 0.08 or more if the person was age twenty-
3 one or over at the time of the arrest, or was in violation of RCW
4 46.61.502, 46.61.503, or 46.61.504 if the person was under the age of
5 twenty-one at the time of the arrest. The sworn report or report under
6 a declaration authorized by RCW 9A.72.085 submitted by a law
7 enforcement officer is prima facie evidence that the officer had
8 reasonable grounds to believe the person had been driving or was in
9 actual physical control of a motor vehicle within this state while
10 under the influence of intoxicating liquor or drugs, or both, or the
11 person had been driving or was in actual physical control of a motor
12 vehicle within this state while having alcohol in his or her system in
13 a concentration in violation of RCW 46.61.503 and was under the age of
14 twenty-one and that the officer complied with the requirements of this
15 section.

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

31 (9) If the suspension, revocation, or denial is sustained after
32 such a hearing, the person whose license, privilege, or permit is
33 suspended, revoked, or denied has the right to file a petition in the
34 superior court of the county of arrest to review the final order of
35 revocation by the department in the same manner as an appeal from a
36 decision of a court of limited jurisdiction. Notice of appeal must be
37 filed within thirty days after the date the final order is served or
38 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ

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

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

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

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