
SENATE BILL 5819

State of Washington

58th Legislature

2003 Regular Session

By Senators Finkbeiner and Kline

Read first time 02/13/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to operation of a vehicle, railroad, street car,
2 vessel, or aircraft involved in a fatality; amending RCW 46.61.506; and
3 adding a new section to chapter 10.58 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 10.58 RCW
6 to read as follows:

7 (1) A person who operates a vehicle as defined in RCW 46.04.670,
8 railroad as defined in RCW 46.04.440, street car as defined in RCW
9 46.04.570, vessel as defined in RCW 88.02.010, or aircraft as defined
10 in RCW 14.16.010 within this state is deemed to have given consent,
11 subject to RCW 46.61.506, to a test or tests of his or her breath or
12 blood for the purpose of determining the alcohol concentration or
13 presence of any drug in his or her breath or blood if the vehicle,
14 railroad, street car, vessel, or aircraft is involved in a collision
15 where the death of another person has ensued within eight hours of the
16 collision as a proximate result of injury proximately caused by the
17 operation of the vehicle, railroad, street car, vessel, or aircraft,
18 regardless of whether the operation was as part of the person's
19 official or employment duties or as a private citizen.

1 (2) A law enforcement officer shall order the test and shall warn
2 the operator that:

3 (a) He or she should not ingest any drugs or alcohol for at least
4 eight hours after the collision;

5 (b) If he or she refuses to submit to the test or claims to have
6 ingested drugs or alcohol in the eight hours after the collision it
7 will be presumed in any resulting criminal or civil proceeding that the
8 person was operating the vehicle, railroad, street car, vessel, or
9 aircraft while under the influence of intoxicating liquor or a drug;

10 (c) He or she must remain available for testing for at least eight
11 hours after the collision unless circumstances beyond his or her
12 control prevent his or her availability;

13 (d) The person's unavailability for testing creates a rebuttable
14 presumption that the person was under the influence of intoxicating
15 liquor or a drug at the time of the collision; and

16 (e) The results of the test may be used in a civil or criminal
17 trial.

18 (3) The test or tests of breath must be administered at the
19 direction of a law enforcement officer having reasonable grounds to
20 believe the person was operating or in actual physical control of the
21 vehicle, railroad, street car, vessel, or aircraft. However, in those
22 instances where the person is incapable due to physical injury,
23 physical incapacity, or other physical limitation, of providing a
24 breath sample or where the person is being treated in a hospital,
25 clinic, doctor's office, emergency medical vehicle, ambulance, or other
26 similar facility in which a breath testing instrument is not present or
27 where the officer has reasonable grounds to believe that the person is
28 under the influence of a drug, a blood test may be performed only by a
29 physician, a registered nurse, or a qualified technician. The officer
30 shall inform the person of his or her right to refuse the breath or
31 blood test, and of his or her right to have additional tests
32 administered by any qualified person of his or her choosing as provided
33 in RCW 46.61.506.

34 **Sec. 2.** RCW 46.61.506 and 1998 c 213 s 6 are each amended to read
35 as follows:

36 (1) Upon the trial of any civil or criminal action or proceeding
37 arising out of acts alleged to have been committed by any person (a)

1 while driving or in actual physical control of a vehicle while under
2 the influence of intoxicating liquor or any drug, or (b) covered by
3 section 1 of this act, if the person's alcohol concentration is less
4 than 0.08, it is evidence that may be considered with other competent
5 evidence in determining whether the person was under the influence of
6 intoxicating liquor or any drug.

7 (2) The breath analysis shall be based upon grams of alcohol per
8 two hundred ten liters of breath. The foregoing provisions of this
9 section shall not be construed as limiting the introduction of any
10 other competent evidence bearing upon the question whether the person
11 was under the influence of intoxicating liquor or any drug.

12 (3) Analysis of the person's blood or breath to be considered valid
13 under the provisions of this section or RCW 46.61.502 (~~(e)~~),
14 46.61.504, or section 1 of this act shall have been performed according
15 to methods approved by the state toxicologist and by an individual
16 possessing a valid permit issued by the state toxicologist for this
17 purpose. The state toxicologist is directed to approve satisfactory
18 techniques or methods, to supervise the examination of individuals to
19 ascertain their qualifications and competence to conduct such analyses,
20 and to issue permits which shall be subject to termination or
21 revocation at the discretion of the state toxicologist.

22 (4) When a blood test is administered under the provisions of RCW
23 46.20.308 or section 1 of this act, the withdrawal of blood for the
24 purpose of determining its alcoholic or drug content may be performed
25 only by a physician, a registered nurse, or a qualified technician.
26 This limitation shall not apply to the taking of breath specimens.

27 (5) The person tested may have a physician, or a qualified
28 technician, chemist, registered nurse, or other qualified person of his
29 or her own choosing administer one or more tests in addition to any
30 administered at the direction of a law enforcement officer. The
31 failure or inability to obtain an additional test by a person shall not
32 preclude the admission of evidence relating to the test or tests taken
33 at the direction of a law enforcement officer.

34 (6) Upon the request of the person who shall submit to a test or
35 tests at the request of a law enforcement officer, full information
36 concerning the test or tests shall be made available to him or her or

1 his or her attorney.

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