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HOUSE BILL 2391

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State of Washington                      59th Legislature                      2006 Regular Session

By Representatives Campbell, Flannigan, McCune, Williams, Nixon, McDonald, Morrell, Moeller, Rodne, Springer, Tom, Green and Ericks

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1            AN ACT Relating to blood or breath tests of persons involved in  
2 fatal motor vehicle accidents; amending RCW 46.52.060; reenacting and  
3 amending RCW 46.20.308; adding a new section to chapter 46.52 RCW; and  
4 creating a new section.

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

6            NEW SECTION.    **Sec. 1.** The legislature finds and declares that:

7            (1) The state has a compelling interest in preventing fatal motor  
8 vehicle accidents;

9            (2) There are numerous factors involved in the causation of motor  
10 vehicle accidents, such as the age of the drivers involved, road  
11 conditions, speed of travel, type of vehicles involved, and whether the  
12 drivers were distracted or under the influence of alcohol or drugs;

13            (3) Drivers involved in accidents and law enforcement officers at  
14 accident scenes are required by law to report detailed information  
15 about the accident to the state patrol. To assist in determining the  
16 cause of accidents, the state patrol files, tabulates, and analyzes all  
17 accident reports and publishes statistical information showing the  
18 number of accidents, the location, the frequency, whether the drivers  
19 involved were distracted at the time, and other relevant information.

1 Such accident reports and analysis are available to various state  
2 agencies such as the traffic safety commission and the department of  
3 transportation to be used for further analysis relevant to highway  
4 safety;

5 (4) To help prevent fatal motor vehicle accidents, it is necessary  
6 to analyze and understand the causes of such accidents, including the  
7 role played by alcohol and drugs;

8 (5) The state's compelling interest in understanding the causes of  
9 and preventing fatal motor vehicle accidents creates a special need  
10 beyond normal law enforcement for the collection of breath or blood  
11 alcohol content from drivers involved in fatal motor vehicle accidents;  
12 and

13 (6) Because evidence of blood alcohol content diminishes over time,  
14 requiring a warrant before that evidence can be collected would be  
15 impracticable and would frustrate the state's interest in collecting  
16 the information.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.52 RCW  
18 to read as follows:

19 (1) Any person who operates a motor vehicle within this state and  
20 is involved in a motor vehicle accident in which there is a death or  
21 reasonable likelihood of death to another person shall, at the  
22 direction of a law enforcement officer, submit to a test of his or her  
23 breath or blood for the purpose of determining the alcohol  
24 concentration or presence of any drug in his or her breath or blood.  
25 The person's consent is not required. A law enforcement officer having  
26 reasonable grounds to believe that the person to be tested was driving  
27 or was in actual physical control of the motor vehicle at the time of  
28 the accident shall order the test regardless of whether the person to  
29 be tested was driving or in actual physical control of the motor  
30 vehicle as part of his or her official or employment duties or as a  
31 private citizen.

32 (2) The law enforcement officer shall forward the results of the  
33 breath or blood alcohol test to the chief of the Washington state  
34 patrol to be used as provided under RCW 46.52.060.

35 **Sec. 3.** RCW 46.52.060 and 2005 c 171 s 2 are each amended to read  
36 as follows:

1           It shall be the duty of the chief of the Washington state patrol to  
2 file, tabulate, and analyze all accident reports and breath or blood  
3 alcohol concentration test results collected under section 2 of this  
4 act and to publish annually, immediately following the close of each  
5 fiscal year, and monthly during the course of the year, statistical  
6 information based thereon showing the number of accidents, the  
7 location, the frequency, whether any driver involved in the accident  
8 was distracted at the time of the accident and the circumstances  
9 thereof, and other statistical information which may prove of  
10 assistance in determining the cause of vehicular accidents.  
11 Distractions contributing to an accident to be reported must include at  
12 least the following: Not distracted; operating a handheld electronic  
13 telecommunication device; operating a hands-free wireless  
14 telecommunication device; other electronic devices (including, but not  
15 limited to, PDA's, laptop computers, navigational devices, etc.);  
16 adjusting an audio or entertainment system; smoking; eating or  
17 drinking; reading or writing; grooming; interacting with children,  
18 passengers, animals, or objects in the vehicle; other inside  
19 distractions; outside distractions; and distraction unknown.

20           Such accident reports, breath or blood alcohol concentration test  
21 results, and analysis or reports thereof shall be available to the  
22 director of licensing, the department of transportation, the utilities  
23 and transportation commission, the traffic safety commission, and other  
24 public entities authorized by the chief of the Washington state patrol,  
25 or their duly authorized representatives, for further tabulation and  
26 analysis for pertinent data relating to the regulation of highway  
27 traffic, highway construction, vehicle operators and all other  
28 purposes, and to publish information so derived as may be deemed of  
29 publication value.

30           **Sec. 4.** RCW 46.20.308 and 2005 c 314 s 307 and 2005 c 269 s 1 are  
31 each reenacted and amended to read as follows:

32           (1)(a) Any person who operates a motor vehicle within this state is  
33 deemed to have given consent, subject to the provisions of RCW  
34 46.61.506, to a test or tests of his or her breath or blood for the  
35 purpose of determining the alcohol concentration or presence of any  
36 drug in his or her breath or blood if the person: (i) Is arrested for  
37 any offense where, at the time of the arrest, the arresting officer has

1 reasonable grounds to believe the person had been driving or was in  
2 actual physical control of a motor vehicle while under the influence of  
3 intoxicating liquor or any drug or was in violation of RCW 46.61.503;  
4 or (ii) is involved in an accident in which there has been a death or  
5 reasonable likelihood of death to another person and the officer has  
6 reasonable grounds to believe the person was driving or in actual  
7 physical control of a motor vehicle at the time of the accident. For  
8 purposes of this subsection (1)(a)(ii), the officer shall order the  
9 test regardless of whether the person to be tested was operating the  
10 motor vehicle as part of his or her official or employment duties or as  
11 a private citizen.

12 (b) Neither consent nor this section precludes a police officer  
13 from obtaining a search warrant for a person's breath or blood.

14 (2)(a) The test or tests of breath shall be administered at the  
15 direction of a law enforcement officer having reasonable grounds to  
16 believe the person to have been: (i) Driving or in actual physical  
17 control of a motor vehicle within this state while under the influence  
18 of intoxicating liquor or any drug (~~or the person to have been~~); (ii)  
19 driving or in actual physical control of a motor vehicle while having  
20 alcohol in a concentration in violation of RCW 46.61.503 in his or her  
21 system and being under the age of twenty-one; or (iii) driving or in  
22 actual physical control of a motor vehicle involved in an accident in  
23 which there has been a death or reasonable likelihood of death to  
24 another person, as provided in section 2 of this act.

25 (b) However, in those instances where the person is incapable due  
26 to physical injury, physical incapacity, or other physical limitation,  
27 of providing a breath sample or where the person is being treated in a  
28 hospital, clinic, doctor's office, emergency medical vehicle,  
29 ambulance, or other similar facility or where the officer has  
30 reasonable grounds to believe that the person is under the influence of  
31 a drug, a blood test shall be administered by a qualified person as  
32 provided in RCW 46.61.506(5). The officer shall inform the person of  
33 his or her right to refuse the breath or blood test, and of his or her  
34 right to have additional tests administered by any qualified person of  
35 his or her choosing as provided in RCW 46.61.506. The officer shall  
36 warn the driver, in substantially the following language, that:

37 ((+a)) (i) If the driver refuses to take the test, the driver's

1 license, permit, or privilege to drive will be revoked or denied for at  
2 least one year; and

3 ~~((b))~~ (ii) If the driver refuses to take the test, the driver's  
4 refusal to take the test may be used in a criminal trial; and

5 ~~((e))~~ (iii) If the driver submits to the test and the test is  
6 administered, the driver's license, permit, or privilege to drive will  
7 be suspended, revoked, or denied for at least ninety days if the driver  
8 is age twenty-one or over and the test indicates the alcohol  
9 concentration of the driver's breath or blood is 0.08 or more, or if  
10 the driver is under age twenty-one and the test indicates the alcohol  
11 concentration of the driver's breath or blood is 0.02 or more, or if  
12 the driver is under age twenty-one and the driver is in violation of  
13 RCW 46.61.502 or 46.61.504.

14 (3) Except as provided in this section, the test administered shall  
15 be of the breath only. If an individual is unconscious or is under  
16 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
17 or vehicular assault as provided in RCW 46.61.522, or if an individual  
18 is under arrest for the crime of driving while under the influence of  
19 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest  
20 results from an accident in which there has been serious bodily injury  
21 to another person, or if an individual was driving or in actual  
22 physical control of a motor vehicle involved in an accident in which  
23 there has been a death or reasonable likelihood of death to another  
24 person, a breath or blood test may be administered without the consent  
25 of the individual ~~((so-arrested))~~.

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

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

1 (6) If, after arrest and after the other applicable conditions and  
2 requirements of this section have been satisfied, a test or tests of  
3 the person's blood or breath is administered and the test results  
4 indicate that the alcohol concentration of the person's breath or blood  
5 is 0.08 or more if the person is age twenty-one or over, or 0.02 or  
6 more if the person is under the age of twenty-one, or the person  
7 refuses to submit to a test, the arresting officer or other law  
8 enforcement officer at whose direction any test has been given, or the  
9 department, where applicable, if the arrest results in a test of the  
10 person's blood, shall:

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

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

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

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

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

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

1 (ii) That after receipt of the warnings required by subsection (2)  
2 of this section the person refused to submit to a test of his or her  
3 blood or breath, or a test was administered and the results indicated  
4 that the alcohol concentration of the person's breath or blood was 0.08  
5 or more if the person is age twenty-one or over, or was 0.02 or more if  
6 the person is under the age of twenty-one; and

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

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

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

1 otherwise eligible for licensing. For the purposes of this section,  
2 the scope of the hearing shall cover the issues of whether a law  
3 enforcement officer had reasonable grounds to believe the person had  
4 been driving or was in actual physical control of a motor vehicle  
5 within this state while under the influence of intoxicating liquor or  
6 any drug or had been driving or was in actual physical control of a  
7 motor vehicle within this state while having alcohol in his or her  
8 system in a concentration of 0.02 or more if the person was under the  
9 age of twenty-one, whether the person was placed under arrest, and (a)  
10 whether the person refused to submit to the test or tests upon request  
11 of the officer after having been informed that such refusal would  
12 result in the revocation of the person's license, permit, or privilege  
13 to drive, or (b) if a test or tests were administered, whether the  
14 applicable requirements of this section were satisfied before the  
15 administration of the test or tests, whether the person submitted to  
16 the test or tests, or whether a test was administered without express  
17 consent as permitted under this section, and whether the test or tests  
18 indicated that the alcohol concentration of the person's breath or  
19 blood was 0.08 or more if the person was age twenty-one or over at the  
20 time of the arrest, or 0.02 or more if the person was under the age of  
21 twenty-one at the time of the arrest. The sworn report or report under  
22 a declaration authorized by RCW 9A.72.085 submitted by a law  
23 enforcement officer is prima facie evidence that the officer had  
24 reasonable grounds to believe the person had been driving or was in  
25 actual physical control of a motor vehicle within this state while  
26 under the influence of intoxicating liquor or drugs, or both, or the  
27 person had been driving or was in actual physical control of a motor  
28 vehicle within this state while having alcohol in his or her system in  
29 a concentration of 0.02 or more and was under the age of twenty-one and  
30 that the officer complied with the requirements of this section.

31 A hearing officer shall conduct the hearing, may issue subpoenas  
32 for the attendance of witnesses and the production of documents, and  
33 shall administer oaths to witnesses. The hearing officer shall not  
34 issue a subpoena for the attendance of a witness at the request of the  
35 person unless the request is accompanied by the fee required by RCW  
36 5.56.010 for a witness in district court. The sworn report or report  
37 under a declaration authorized by RCW 9A.72.085 of the law enforcement  
38 officer and any other evidence accompanying the report shall be



1 admissible without further evidentiary foundation and the  
2 certifications authorized by the criminal rules for courts of limited  
3 jurisdiction shall be admissible without further evidentiary  
4 foundation. The person may be represented by counsel, may question  
5 witnesses, may present evidence, and may testify. The department shall  
6 order that the suspension, revocation, or denial either be rescinded or  
7 sustained.

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

1 likely to prevail in the appeal and that without a stay the appellant  
2 will suffer irreparable injury. If the court stays the suspension,  
3 revocation, or denial it may impose conditions on such stay.

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

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

36 (c) The provisions of (b) of this subsection relating to a stay of  
37 a suspension, revocation, or denial and the cancellation of any

1 suspension, revocation, or denial do not apply to the suspension,  
2 revocation, denial, or disqualification of a person's commercial  
3 driver's license or privilege to operate a commercial motor vehicle.

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

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