
HOUSE BILL 2313

State of Washington 60th Legislature 2007 Regular Session

By Representatives Kagi, Rodne, Dickerson, Lantz, Morrell and Goodman

Read first time 02/20/2007. Referred to Committee on Judiciary.

1 AN ACT Relating to preventing alcohol and drug use by persons
2 involved in fatal or near fatal motor vehicle accidents; reenacting and
3 amending RCW 46.20.308 and 46.20.3101; and adding new sections to
4 chapter 46.61 RCW.

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

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

8 A person may not drive, operate, or be in physical control of a
9 motor vehicle while the alcohol concentration in the person's system is
10 0.08 or more, or with the presence of any Schedule I drug, as listed in
11 RCW 69.50.204, or its metabolites, or any Schedule II drug, as listed
12 in RCW 69.50.206, or its metabolites, in his or her blood and be
13 involved in a motor vehicle accident in which there is a death or a
14 reasonable likelihood of death to another person.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.61 RCW
16 to read as follows:

17 (1) Regardless of whether a person may be subject to a breath or
18 blood alcohol concentration test under RCW 46.20.308, any person who

1 operates a motor vehicle within this state and is involved in a motor
2 vehicle accident in which there is a death or a reasonable likelihood
3 of death to another person shall, at the direction of a law enforcement
4 officer, submit to a test of his or her blood for the purpose of
5 determining the alcohol concentration in his or her blood or the
6 presence of any Schedule I drug, as listed in RCW 69.50.204, or its
7 metabolites, or any Schedule II drug, as listed in RCW 69.50.206, or
8 its metabolites, in his or her blood. The person's consent is not
9 required.

10 (2) A law enforcement officer having reasonable grounds to believe
11 that a person was driving or in actual physical control of a motor
12 vehicle and is involved in an accident in which there is a death or a
13 reasonable likelihood of death to another person shall order the person
14 to be tested. The law enforcement officer shall order the test
15 regardless of whether the person was driving or in actual physical
16 control of the motor vehicle as part of his or her official or
17 employment duties or as a private citizen.

18 (3) RCW 46.20.308 applies to persons tested under this section.
19 However, the implied consent warnings required under RCW 46.20.308 do
20 not apply, and a requirement under RCW 46.20.308 that there be
21 reasonable grounds to believe that the person had been driving or in
22 actual physical control of a motor vehicle while under the influence of
23 intoxicating liquor or drugs is satisfied when, under this section,
24 there is reasonable grounds to believe that the person was driving or
25 in actual physical control of a motor vehicle at the time of the
26 accident.

27 **Sec. 3.** RCW 46.20.308 and 2005 c 314 s 307 and 2005 c 269 s 1 are
28 each reenacted and amended to read as follows:

29 (1) Any person who operates a motor vehicle within this state is
30 deemed to have given consent, subject to the provisions of RCW
31 46.61.506, to a test or tests of his or her breath or blood for the
32 purpose of determining the alcohol concentration or presence of any
33 drug in his or her breath or blood if arrested for any offense where,
34 at the time of the arrest, the arresting officer has reasonable grounds
35 to believe the person had been driving or was in actual physical
36 control of a motor vehicle while under the influence of intoxicating

1 liquor or any drug or was in violation of RCW 46.61.503. Neither
2 consent nor this section precludes a police officer from obtaining a
3 search warrant for a person's breath or blood.

4 (2) The test or tests of breath shall be administered at the
5 direction of a law enforcement officer having reasonable grounds to
6 believe the person to have been driving or in actual physical control
7 of a motor vehicle within this state while under the influence of
8 intoxicating liquor or any drug or the person to have been driving or
9 in actual physical control of a motor vehicle while having alcohol in
10 a concentration in violation of RCW 46.61.503 in his or her system and
11 being under the age of twenty-one. However, in those instances where
12 the person is incapable due to physical injury, physical incapacity, or
13 other physical limitation, of providing a breath sample or where the
14 person is being treated in a hospital, clinic, doctor's office,
15 emergency medical vehicle, ambulance, or other similar facility or
16 where the officer has reasonable grounds to believe that the person is
17 under the influence of a drug, a blood test shall be administered by a
18 qualified person as provided in RCW 46.61.506(5). The officer shall
19 inform the person of his or her right to refuse the breath or blood
20 test, and of his or her right to have additional tests administered by
21 any qualified person of his or her choosing as provided in RCW
22 46.61.506. The officer shall warn the driver, in substantially the
23 following language, that:

24 (a) If the driver refuses to take the test, the driver's license,
25 permit, or privilege to drive will be revoked or denied for at least
26 one year; and

27 (b) If the driver refuses to take the test, the driver's refusal to
28 take the test may be used in a criminal trial; and

29 (c) If the driver submits to the test and the test is administered,
30 the driver's license, permit, or privilege to drive will be suspended,
31 revoked, or denied for at least ninety days if the driver is age
32 twenty-one or over and the test indicates the alcohol concentration of
33 the driver's breath or blood is 0.08 or more, or if the driver is under
34 age twenty-one and the test indicates the alcohol concentration of the
35 driver's breath or blood is 0.02 or more, or if the driver is under age
36 twenty-one and the driver is in violation of RCW 46.61.502 or
37 46.61.504, or if the driver is in violation of section 1 of this act.

1 (3) Except as provided in this section, the test administered shall
2 be of the breath only. If an individual is unconscious or is under
3 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
4 or vehicular assault as provided in RCW 46.61.522, or if an individual
5 is under arrest for the crime of driving while under the influence of
6 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
7 results from an accident in which there has been serious bodily injury
8 to another person, a breath or blood test may be administered without
9 the consent of the individual so arrested.

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

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

21 (6) If, after arrest and after the other applicable conditions and
22 requirements of this section have been satisfied, a test or tests of
23 the person's blood or breath is administered and the test results
24 indicate that the alcohol concentration of the person's breath or blood
25 is 0.08 or more if the person is age twenty-one or over, or 0.02 or
26 more if the person is under the age of twenty-one, or the person
27 refuses to submit to a test, the arresting officer or other law
28 enforcement officer at whose direction any test has been given, or the
29 department, where applicable, if the arrest results in a test of the
30 person's blood, shall:

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

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

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

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

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

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

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 0.02 or more if
26 the person is under the age of twenty-one; and

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

28 (7) The department of licensing, upon the receipt of a sworn report
29 or report under a declaration authorized by RCW 9A.72.085 under
30 subsection (6)(e) of this section, shall suspend, revoke, or deny the
31 person's license, permit, or privilege to drive or any nonresident
32 operating privilege, as provided in RCW 46.20.3101, such suspension,
33 revocation, or denial to be effective beginning sixty days from the
34 date of arrest or from the date notice has been given in the event
35 notice is given by the department following a blood test, or when
36 sustained at a hearing pursuant to subsection (8) of this section,
37 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 two 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 two hundred dollar
8 fee, the department shall afford the person an opportunity for a
9 hearing. The department may waive the required two 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 of 0.02 or more if the person was under the
30 age of twenty-one, whether the person was placed under arrest, and (a)
31 whether the person refused to submit to the test or tests upon request
32 of the officer after having been informed that such refusal would
33 result in the revocation of the person's license, permit, or privilege
34 to drive, or (b) if a test or tests were administered, whether the
35 applicable requirements of this section were satisfied before the
36 administration of the test or tests, whether the person submitted to
37 the test or tests, or whether a test was administered without express
38 consent as permitted under this section, (~~and~~) whether the test or

1 tests indicated that the alcohol concentration of the person's breath
2 or blood was 0.08 or more if the person was age twenty-one or over at
3 the time of the arrest, or 0.02 or more if the person was under the age
4 of twenty-one at the time of the arrest, and, if the test was
5 administered under section 2 of this act, whether the person had a
6 valid prescription for the drug and had taken the drug in accordance
7 with the prescription's directions and warnings. The sworn report or
8 report under a declaration authorized by RCW 9A.72.085 submitted by a
9 law enforcement officer is prima facie evidence that the officer had
10 reasonable grounds to believe the person had been driving or was in
11 actual physical control of a motor vehicle within this state while
12 under the influence of intoxicating liquor or drugs, or both, or the
13 person had been driving or was in actual physical control of a motor
14 vehicle within this state while having alcohol in his or her system in
15 a concentration of 0.02 or more and was under the age of twenty-one and
16 that the officer complied with the requirements of this section.

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

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

1 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
2 1.1, or other statutes or rules referencing de novo review, the appeal
3 shall be limited to a review of the record of the administrative
4 hearing. The appellant must pay the costs associated with obtaining
5 the record of the hearing before the hearing officer. The filing of
6 the appeal does not stay the effective date of the suspension,
7 revocation, or denial. A petition filed under this subsection must
8 include the petitioner's grounds for requesting review. Upon granting
9 petitioner's request for review, the court shall review the
10 department's final order of suspension, revocation, or denial as
11 expeditiously as possible. The review must be limited to a
12 determination of whether the department has committed any errors of
13 law. The superior court shall accept those factual determinations
14 supported by substantial evidence in the record: (a) That were
15 expressly made by the department; or (b) that may reasonably be
16 inferred from the final order of the department. The superior court
17 may reverse, affirm, or modify the decision of the department or remand
18 the case back to the department for further proceedings. The decision
19 of the superior court must be in writing and filed in the clerk's
20 office with the other papers in the case. The court shall state the
21 reasons for the decision. If judicial relief is sought for a stay or
22 other temporary remedy from the department's action, the court shall
23 not grant such relief unless the court finds that the appellant is
24 likely to prevail in the appeal and that without a stay the appellant
25 will suffer irreparable injury. If the court stays the suspension,
26 revocation, or denial it may impose conditions on such stay.

27 (10)(a) If a person whose driver's license, permit, or privilege to
28 drive has been or will be suspended, revoked, or denied under
29 subsection (7) of this section, other than as a result of a breath or
30 blood test refusal, and who has not committed an offense for which he
31 or she was granted a deferred prosecution under chapter 10.05 RCW,
32 petitions a court for a deferred prosecution on criminal charges
33 arising out of the arrest for which action has been or will be taken
34 under subsection (7) of this section, or notifies the department of
35 licensing of the intent to seek such a deferred prosecution, then the
36 license suspension or revocation shall be stayed pending entry of the
37 deferred prosecution. The stay shall not be longer than one hundred
38 fifty days after the date charges are filed, or two years after the

1 date of the arrest, whichever time period is shorter. If the court
2 stays the suspension, revocation, or denial, it may impose conditions
3 on such stay. If the person is otherwise eligible for licensing, the
4 department shall issue a temporary license, or extend any valid
5 temporary license marked under subsection (6) of this section, for the
6 period of the stay. If a deferred prosecution treatment plan is not
7 recommended in the report made under RCW 10.05.050, or if treatment is
8 rejected by the court, or if the person declines to accept an offered
9 treatment plan, or if the person violates any condition imposed by the
10 court, then the court shall immediately direct the department to cancel
11 the stay and any temporary marked license or extension of a temporary
12 license issued under this subsection.

13 (b) A suspension, revocation, or denial imposed under this section,
14 other than as a result of a breath or blood test refusal, shall be
15 stayed if the person is accepted for deferred prosecution as provided
16 in chapter 10.05 RCW for the incident upon which the suspension,
17 revocation, or denial is based. If the deferred prosecution is
18 terminated, the stay shall be lifted and the suspension, revocation, or
19 denial reinstated. If the deferred prosecution is completed, the stay
20 shall be lifted and the suspension, revocation, or denial canceled.

21 (c) The provisions of (b) of this subsection relating to a stay of
22 a suspension, revocation, or denial and the cancellation of any
23 suspension, revocation, or denial do not apply to the suspension,
24 revocation, denial, or disqualification of a person's commercial
25 driver's license or privilege to operate a commercial motor vehicle.

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

32 **Sec. 4.** RCW 46.20.3101 and 2004 c 95 s 4 and 2004 c 68 s 3 are
33 each reenacted and amended to read as follows:

34 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
35 deny the arrested person's license, permit, or privilege to drive as
36 follows:

37 (1) In the case of a person who has refused a test or tests:

1 (a) For a first refusal within seven years, where there has not
2 been a previous incident within seven years that resulted in
3 administrative action under this section, revocation or denial for one
4 year;

5 (b) For a second or subsequent refusal within seven years, or for
6 a first refusal where there has been one or more previous incidents
7 within seven years that have resulted in administrative action under
8 this section, revocation or denial for two years or until the person
9 reaches age twenty-one, whichever is longer.

10 (2) In the case of an incident where a person has submitted to or
11 been administered a test or tests indicating that the alcohol
12 concentration of the person's breath or blood was 0.08 or more:

13 (a) For a first incident within seven years, where there has not
14 been a previous incident within seven years that resulted in
15 administrative action under this section, suspension for ninety days;

16 (b) For a second or subsequent incident within seven years,
17 revocation or denial for two years.

18 (3) In the case of an incident where a person under age twenty-one
19 has submitted to or been administered a test or tests indicating that
20 the alcohol concentration of the person's breath or blood was 0.02 or
21 more:

22 (a) For a first incident within seven years, suspension or denial
23 for ninety days;

24 (b) For a second or subsequent incident within seven years,
25 revocation or denial for one year or until the person reaches age
26 twenty-one, whichever is longer.

27 (4) In the case of an incident where a person has submitted to or
28 been administered a test or tests under section 2 of this act
29 indicating the presence of any Schedule I drug, as listed in RCW
30 69.50.204, or its metabolites, or any Schedule II drug, as listed in
31 RCW 69.50.206, or its metabolites, in his or her blood:

32 (a) For a first incident within seven years, where there has not
33 been a previous incident within seven years that resulted in
34 administrative action under this section, suspension for one year;

35 (b) For a second or subsequent incident within seven years,
36 revocation or denial for two years.

37 (5) The department shall grant credit on a day-for-day basis for

1 any portion of a suspension, revocation, or denial already served under
2 this section for a suspension, revocation, or denial imposed under RCW
3 46.61.5055 arising out of the same incident.

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