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HOUSE BILL 1228

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State of Washington

69th Legislature

2025 Regular Session

By Representatives Hackney and Barkis

Prefiled 01/09/25.

1 AN ACT Relating to toxicology testing by certified or accredited  
2 laboratories; and amending RCW 46.61.506.

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

4 **Sec. 1.** RCW 46.61.506 and 2020 c 80 s 33 are each amended to  
5 read as follows:

6 (1) Upon the trial of any civil or criminal action or proceeding  
7 arising out of acts alleged to have been committed by any person  
8 while driving or in actual physical control of a vehicle while under  
9 the influence of intoxicating liquor or any drug, if the person's  
10 alcohol concentration is less than 0.08 or the person's THC  
11 concentration is less than 5.00, it is evidence that may be  
12 considered with other competent evidence in determining whether the  
13 person was under the influence of intoxicating liquor or any drug.

14 (2)(a) The breath analysis of the person's alcohol concentration  
15 shall be based upon grams of alcohol per (~~two hundred ten~~) 210  
16 liters of breath.

17 (b) The blood analysis of the person's THC concentration shall be  
18 based upon nanograms per milliliter of whole blood.

19 (c) The foregoing provisions of this section shall not be  
20 construed as limiting the introduction of any other competent

1 evidence bearing upon the question whether the person was under the  
2 influence of intoxicating liquor or any drug.

3 (3) (a) Analysis of the person's blood or breath to be considered  
4 valid under the provisions of this section or RCW 46.61.502 or  
5 46.61.504 shall have been performed (~~(according to methods approved~~  
6 ~~by the state toxicologist and by an individual)~~) by either:

7 (i) An individual employing methods approved by the state  
8 toxicologist and possessing a valid permit issued by the state  
9 toxicologist for this purpose, as described in (b) of this  
10 subsection; or

11 (ii) A laboratory certified or accredited pursuant to the  
12 international organization for standardization and the international  
13 electrotechnical commission's ISO/IEC 17025 standard for forensic  
14 toxicology testing.

15 (b) The state toxicologist is directed to approve satisfactory  
16 techniques or methods, to supervise the examination of individuals to  
17 ascertain their qualifications and competence to conduct such  
18 analyses, and to issue permits, which shall be subject to termination  
19 or revocation at the discretion of the state toxicologist.

20 (4) (a) A breath test performed by any instrument approved by the  
21 state toxicologist shall be admissible at trial or in an  
22 administrative proceeding if the prosecution or department produces  
23 prima facie evidence of the following:

24 (i) The person who performed the test was authorized to perform  
25 such test by the state toxicologist;

26 (ii) The person being tested did not vomit or have anything to  
27 eat, drink, or smoke for at least (~~(fifteen))~~ 15 minutes prior to  
28 administration of the test;

29 (iii) The person being tested did not have any foreign  
30 substances, not to include dental work or piercings, fixed or  
31 removable, in his or her mouth at the beginning of the (~~(fifteen-~~  
32 ~~minute))~~ 15-minute observation period;

33 (iv) Prior to the start of the test, the temperature of any  
34 liquid simulator solution utilized as an external standard, as  
35 measured by a thermometer approved of by the state toxicologist was  
36 (~~(thirty-four))~~ 34 degrees centigrade plus or minus 0.3 degrees  
37 centigrade;

38 (v) The internal standard test resulted in the message  
39 "verified";

1 (vi) The two breath samples agree to within plus or minus (~~ten~~)  
2 10 percent of their mean to be determined by the method approved by  
3 the state toxicologist;

4 (vii) The result of the test of the liquid simulator solution  
5 external standard or dry gas external standard result did lie  
6 between .072 to .088 inclusive; and

7 (viii) All blank tests gave results of .000.

8 (b) For purposes of this section, "prima facie evidence" is  
9 evidence of sufficient circumstances that would support a logical and  
10 reasonable inference of the facts sought to be proved. In assessing  
11 whether there is sufficient evidence of the foundational facts, the  
12 court or administrative tribunal is to assume the truth of the  
13 prosecution's or department's evidence and all reasonable inferences  
14 from it in a light most favorable to the prosecution or department.

15 (c) Nothing in this section shall be deemed to prevent the  
16 subject of the test from challenging the reliability or accuracy of  
17 the test, the reliability or functioning of the instrument, or any  
18 maintenance procedures. Such challenges, however, shall not preclude  
19 the admissibility of the test once the prosecution or department has  
20 made a prima facie showing of the requirements contained in (a) of  
21 this subsection. Instead, such challenges may be considered by the  
22 trier of fact in determining what weight to give to the test result.

23 (5) When a blood test is administered under the provisions of RCW  
24 46.20.308, the withdrawal of blood for the purpose of determining its  
25 alcohol or drug content may be performed only by a physician licensed  
26 under chapter 18.71 RCW; an osteopathic physician licensed under  
27 chapter 18.57 RCW; a registered nurse, licensed practical nurse, or  
28 advanced registered nurse practitioner licensed under chapter 18.79  
29 RCW; a physician assistant licensed under chapter 18.71A RCW; an  
30 advanced emergency medical technician or paramedic certified under  
31 chapter 18.71 RCW; or a medical assistant-certified or medical  
32 assistant-phlebotomist certified under chapter 18.360 RCW, a person  
33 holding another credential under Title 18 RCW whose scope of practice  
34 includes performing venous blood draws, or a forensic phlebotomist  
35 certified under chapter 18.360 RCW. When the blood test is performed  
36 outside the state of Washington, the withdrawal of blood for the  
37 purpose of determining its alcohol or drug content may be performed  
38 by any person who is authorized by the out-of-state jurisdiction to  
39 perform venous blood draws. Proof of qualification to draw blood may  
40 be established through the department of health's provider credential

1 search. This limitation shall not apply to the taking of breath  
2 specimens.

3 (6) When a venous blood sample is performed by a forensic  
4 phlebotomist certified under chapter 18.360 RCW, it must be done  
5 under the following conditions:

6 (a) If taken at the scene, it must be performed in an ambulance  
7 or aid service vehicle licensed by the department of health under  
8 chapter 18.73 RCW.

9 (b) The collection of blood samples must not interfere with the  
10 provision of essential medical care.

11 (c) The blood sample must be collected using sterile equipment  
12 and the skin area of puncture must be thoroughly cleansed and  
13 disinfected.

14 (d) The person whose blood is collected must be seated, reclined,  
15 or lying down when the blood is collected.

16 (7) The person tested may have a licensed or certified health  
17 care provider listed in subsection (5) of this section, or a  
18 qualified technician, chemist, or other qualified person of his or  
19 her own choosing administer one or more tests in addition to any  
20 administered at the direction of a law enforcement officer. The test  
21 will be admissible if the person establishes the general  
22 acceptability of the testing technique or method. The failure or  
23 inability to obtain an additional test by a person shall not preclude  
24 the admission of evidence relating to the test or tests taken at the  
25 direction of a law enforcement officer.

26 (8) Upon the request of the person who shall submit to a test or  
27 tests at the request of a law enforcement officer, full information  
28 concerning the test or tests shall be made available to him or her or  
29 his or her attorney.

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