

**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: I-3151.1/16

ATTY/TYPIST: KS:akl

BRIEF DESCRIPTION:

1 AN ACT Relating to the removal or extraction of human biological  
2 material; amending RCW 46.20.308 and 46.52.065; creating a new  
3 section; and repealing RCW 46.61.508 and 90.56.560.

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

5 NEW SECTION. **Sec. 1.** (1) It is the intent of the people through  
6 this initiative to preserve their natural right to exclusive  
7 autonomous sovereignty concerning their own bodies.

8 (2) Under no circumstances is it lawful to remove or extract  
9 biological material from:

10 (a) A conscious person's body for any purpose without that  
11 person's explicitly expressed consent, following notification of his  
12 or her right not to provide such material;

13 (b) An unconscious person for any purpose other than to render  
14 life-preserving medical aid;

15 (c) A deceased person's body, except:

16 (i) If required to determine the cause of death;

17 (ii) To fulfill the expressed intentions of the deceased person;

18 or

19 (iii) If no other reliable means exist to identify the deceased  
20 person.

1       **Sec. 2.**    RCW 46.20.308 and 2015 2nd sp.s. c 3 s 5 are each  
2 amended to read as follows:

3       (1) Any person who operates a motor vehicle within this state is  
4 deemed to have given consent, subject to the provisions of RCW  
5 46.61.506, to a test or tests of his or her breath for the purpose of  
6 determining the alcohol concentration in his or her breath if  
7 arrested for any offense where, at the time of the arrest, the  
8 arresting officer has reasonable grounds to believe the person had  
9 been driving or was in actual physical control of a motor vehicle  
10 while under the influence of intoxicating liquor or any drug or was  
11 in violation of RCW 46.61.503.

12       (2) The test or tests of breath shall be administered at the  
13 direction of a law enforcement officer having reasonable grounds to  
14 believe the person to have been driving or in actual physical control  
15 of a motor vehicle within this state while under the influence of  
16 intoxicating liquor or any drug or the person to have been driving or  
17 in actual physical control of a motor vehicle while having alcohol in  
18 a concentration in violation of RCW 46.61.503 in his or her system  
19 and being under the age of twenty-one. Prior to administering a  
20 breath test pursuant to this section, the officer shall inform the  
21 person of his or her right under this section to refuse the breath  
22 test, and of his or her right to have additional tests administered  
23 by any qualified person of his or her choosing as provided in RCW  
24 46.61.506. The officer shall warn the driver, in substantially the  
25 following language, that:

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

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

31       (c) If the driver submits to the test and the test is  
32 administered, the driver's license, permit, or privilege to drive  
33 will be suspended, revoked, or denied for at least ninety days if:

34       (i) The driver is age twenty-one or over and the test indicates  
35 either that the alcohol concentration of the driver's breath is 0.08  
36 or more; or

37       (ii) The driver is under age twenty-one and the test indicates  
38 either that the alcohol concentration of the driver's breath is 0.02  
39 or more; or

1 (iii) The driver is under age twenty-one and the driver is in  
2 violation of RCW 46.61.502 or 46.61.504; and

3 (d) If the driver's license, permit, or privilege to drive is  
4 suspended, revoked, or denied the driver may be eligible to  
5 immediately apply for an ignition interlock driver's license.

6 (3) If, following his or her arrest and receipt of warnings under  
7 subsection (2) of this section, the person arrested exercises the  
8 right, granted herein, by refusing upon the request of a law  
9 enforcement officer to submit to a test or tests of his or her  
10 breath, no test shall be given except as otherwise authorized by law.

11 ~~(4) ((Nothing in subsection (1), (2), or (3) of this section~~  
12 ~~precludes a law enforcement officer from obtaining a person's blood~~  
13 ~~to test for alcohol, marijuana, or any drug, pursuant to a search~~  
14 ~~warrant, a valid waiver of the warrant requirement, when exigent~~  
15 ~~circumstances exist, or under any other authority of law.))~~ Any blood  
16 drawn for the purpose of determining the person's alcohol, marijuana  
17 levels, or any drug, is drawn pursuant to this section when the  
18 officer has reasonable grounds to believe that the person is in  
19 physical control or driving a vehicle under the influence or in  
20 violation of RCW 46.61.503.

21 (5) If, after arrest and after any other applicable conditions  
22 and requirements of this section have been satisfied, a test or tests  
23 of the person's blood or breath is administered and the test results  
24 indicate that the alcohol concentration of the person's breath or  
25 blood is 0.08 or more, or the THC concentration of the person's blood  
26 is 5.00 or more, if the person is age twenty-one or over, or that the  
27 alcohol concentration of the person's breath or blood is 0.02 or  
28 more, or the THC concentration of the person's blood is above 0.00,  
29 if the person is under the age of twenty-one, or the person refuses  
30 to submit to a test, the arresting officer or other law enforcement  
31 officer at whose direction any test has been given, or the  
32 department, where applicable, if the arrest results in a test of the  
33 person's blood, shall:

34 (a) Serve notice in writing on the person on behalf of the  
35 department of its intention to suspend, revoke, or deny the person's  
36 license, permit, or privilege to drive as required by subsection (6)  
37 of this section;

38 (b) Serve notice in writing on the person on behalf of the  
39 department of his or her right to a hearing, specifying the steps he

1 or she must take to obtain a hearing as provided by subsection (7) of  
2 this section;

3 (c) Serve notice in writing that the license or permit, if any,  
4 is a temporary license that is valid for sixty days from the date of  
5 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  
9 (7) of this section, whichever occurs first. No temporary license is  
10 valid to any greater degree than the license or permit that it  
11 replaces; and

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

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

23 (ii) That after receipt of any applicable warnings required by  
24 subsection (2) of this section the person refused to submit to a test  
25 of his or her breath, or a test was administered and the results  
26 indicated that the alcohol concentration of the person's breath or  
27 blood was 0.08 or more, or the THC concentration of the person's  
28 blood was 5.00 or more, if the person is age twenty-one or over, or  
29 that the alcohol concentration of the person's breath or blood was  
30 0.02 or more, or the THC concentration of the person's blood was  
31 above 0.00, if the person is under the age of twenty-one; and

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

34 (6) The department of licensing, upon the receipt of a sworn  
35 report or report under a declaration authorized by RCW 9A.72.085  
36 under subsection (5)(d) of this section, shall suspend, revoke, or  
37 deny the person's license, permit, or privilege to drive or any  
38 nonresident operating privilege, as provided in RCW 46.20.3101, such  
39 suspension, revocation, or denial to be effective beginning sixty  
40 days from the date of arrest or from the date notice has been given

1 in the event notice is given by the department following a blood  
2 test, or when sustained at a hearing pursuant to subsection (7) of  
3 this section, whichever occurs first.

4 (7) A person receiving notification under subsection (5)(b) of  
5 this section may, within twenty days after the notice has been given,  
6 request in writing a formal hearing before the department. The person  
7 shall pay a fee of three hundred seventy-five dollars as part of the  
8 request. If the request is mailed, it must be postmarked within  
9 twenty days after receipt of the notification. Upon timely receipt of  
10 such a request for a formal hearing, including receipt of the  
11 required three hundred seventy-five dollar fee, the department shall  
12 afford the person an opportunity for a hearing. The department may  
13 waive the required three hundred seventy-five dollar fee if the  
14 person is an indigent as defined in RCW 10.101.010. Except as  
15 otherwise provided in this section, the hearing is subject to and  
16 shall be scheduled and conducted in accordance with RCW 46.20.329 and  
17 46.20.332. The hearing shall be conducted in the county of the  
18 arrest, except that all or part of the hearing may, at the discretion  
19 of the department, be conducted by telephone or other electronic  
20 means. The hearing shall be held within sixty days following the  
21 arrest or following the date notice has been given in the event  
22 notice is given by the department following a blood test, unless  
23 otherwise agreed to by the department and the person, in which case  
24 the action by the department shall be stayed, and any valid temporary  
25 license under subsection (5) of this section extended, if the person  
26 is otherwise eligible for licensing. For the purposes of this  
27 section, the scope of the hearing shall cover the issues of whether a  
28 law enforcement officer had reasonable grounds to believe the person  
29 had been driving or was in actual physical control of a motor vehicle  
30 within this state while under the influence of intoxicating liquor or  
31 any drug or had been driving or was in actual physical control of a  
32 motor vehicle within this state while having alcohol in his or her  
33 system in a concentration of 0.02 or more, or THC in his or her  
34 system in a concentration above 0.00, if the person was under the age  
35 of twenty-one, whether the person was placed under arrest, and (a)  
36 whether the person refused to submit to the test or tests upon  
37 request of the officer after having been informed that such refusal  
38 would result in the revocation of the person's license, permit, or  
39 privilege to drive, or (b) if a test or tests were administered,  
40 whether the applicable requirements of this section were satisfied

1 before the administration of the test or tests, whether the person  
2 submitted to the test or tests, or whether a test was administered  
3 pursuant to a search warrant, a valid waiver of the warrant  
4 requirement, when exigent circumstances exist, or under any other  
5 authority of law as permitted under this section, and whether the  
6 test or tests indicated that the alcohol concentration of the  
7 person's breath or blood was 0.08 or more, or the THC concentration  
8 of the person's blood was 5.00 or more, if the person was age twenty-  
9 one or over at the time of the arrest, or that the alcohol  
10 concentration of the person's breath or blood was 0.02 or more, or  
11 the THC concentration of the person's blood was above 0.00, if the  
12 person was under the age of twenty-one at the time of the arrest.  
13 Where a person is found to be in actual physical control of a motor  
14 vehicle while under the influence of intoxicating liquor or any drug  
15 or was under the age of twenty-one at the time of the arrest and was  
16 in physical control of a motor vehicle while having alcohol in his or  
17 her system in a concentration of 0.02 or THC concentration above  
18 0.00, the person may petition the hearing officer to apply the  
19 affirmative defense found in RCW 46.61.504(3) and 46.61.503(2). The  
20 driver has the burden to prove the affirmative defense by a  
21 preponderance of the evidence. The sworn report or report under a  
22 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  
29 in a concentration of 0.02 or more, or THC in his or her system in a  
30 concentration above 0.00, and was under the age of twenty-one and  
31 that the officer complied with the requirements of this section.

32 A hearing officer shall conduct the hearing, may issue subpoenas  
33 for the attendance of witnesses and the production of documents, and  
34 shall administer oaths to witnesses. The hearing officer shall not  
35 issue a subpoena for the attendance of a witness at the request of  
36 the person unless the request is accompanied by the fee required by  
37 RCW 5.56.010 for a witness in district court. The sworn report or  
38 report under a declaration authorized by RCW 9A.72.085 of the law  
39 enforcement officer and any other evidence accompanying the report  
40 shall be admissible without further evidentiary foundation and the

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

7 (8) If the suspension, revocation, or denial is sustained after  
8 such a hearing, the person whose license, privilege, or permit is  
9 suspended, revoked, or denied has the right to file a petition in the  
10 superior court of the county of arrest to review the final order of  
11 revocation by the department in the same manner as an appeal from a  
12 decision of a court of limited jurisdiction. Notice of appeal must be  
13 filed within thirty days after the date the final order is served or  
14 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ  
15 1.1, or other statutes or rules referencing de novo review, the  
16 appeal shall be limited to a review of the record of the  
17 administrative hearing. The appellant must pay the costs associated  
18 with obtaining the record of the hearing before the hearing officer.  
19 The filing of the appeal does not stay the effective date of the  
20 suspension, revocation, or denial. A petition filed under this  
21 subsection must include the petitioner's grounds for requesting  
22 review. Upon granting petitioner's request for review, the court  
23 shall review the department's final order of suspension, revocation,  
24 or denial as expeditiously as possible. The review must be limited to  
25 a determination of whether the department has committed any errors of  
26 law. The superior court shall accept those factual determinations  
27 supported by substantial evidence in the record: (a) That were  
28 expressly made by the department; or (b) that may reasonably be  
29 inferred from the final order of the department. The superior court  
30 may reverse, affirm, or modify the decision of the department or  
31 remand the case back to the department for further proceedings. The  
32 decision of the superior court must be in writing and filed in the  
33 clerk's office with the other papers in the case. The court shall  
34 state the reasons for the decision. If judicial relief is sought for  
35 a stay or other temporary remedy from the department's action, the  
36 court shall not grant such relief unless the court finds that the  
37 appellant is likely to prevail in the appeal and that without a stay  
38 the appellant will suffer irreparable injury. If the court stays the  
39 suspension, revocation, or denial it may impose conditions on such  
40 stay.

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

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

34           (c) The provisions of (b) of this subsection relating to a stay  
35 of a suspension, revocation, or denial and the cancellation of any  
36 suspension, revocation, or denial do not apply to the suspension,  
37 revocation, denial, or disqualification of a person's commercial  
38 driver's license or privilege to operate a commercial motor vehicle.

39           (10) When it has been finally determined under the procedures of  
40 this section that a nonresident's privilege to operate a motor

1 vehicle in this state has been suspended, revoked, or denied, the  
2 department shall give information in writing of the action taken to  
3 the motor vehicle administrator of the state of the person's  
4 residence and of any state in which he or she has a license.

5 **Sec. 3.** RCW 46.52.065 and 1977 ex.s. c 50 s 1 are each amended  
6 to read as follows:

7 ~~((Every coroner or other official performing like functions shall  
8 submit to the state toxicologist a blood sample taken from all  
9 drivers and all pedestrians who are killed in any traffic accident  
10 where the death occurred within four hours after the accident.))~~  
11 Blood samples shall be taken and submitted in the manner prescribed  
12 by the state toxicologist. The state toxicologist shall analyze these  
13 blood samples to determine the concentration of alcohol and, where  
14 feasible, the presence of drugs or other toxic substances. The  
15 reports and records of the state toxicologist relating to analyses  
16 made pursuant to this section shall be confidential: PROVIDED, That  
17 the results of these analyses shall be reported to the state patrol  
18 and made available to the prosecuting attorney or law enforcement  
19 agency having jurisdiction: PROVIDED FURTHER, That the results of  
20 these analyses may be admitted in evidence in any civil or criminal  
21 action where relevant and shall be made available to the parties to  
22 any such litigation on application to the court.

23 NEW SECTION. **Sec. 4.** The following acts or parts of acts are  
24 each repealed:

25 (1) RCW 46.61.508 (Liability of medical personnel withdrawing  
26 blood) and 2015 2nd sp.s. c 3 s 23 & 1977 ex.s. c 143 s 1; and

27 (2) RCW 90.56.560 (Limited immunity for blood withdrawal) and  
28 2000 c 69 s 24 & 1991 c 200 s 607.

--- END ---