
CHAPTER 1
[Initiative Measure No. 242]
DRIVERS' IMPLIED CONSENT --
INTOXICATION TESTS

AN ACT providing that any person operating a motor vehicle on the public highways shall be deemed to have consented to a breath test (if unconscious a blood test) to determine intoxication, when arrested for any offense, provided the arresting officer has reasonable grounds to believe such operator was driving or in control of a vehicle while intoxicated; directing a six-month revocation of driving privileges for a person refusing such test after having been advised of his rights and consequences of refusal; providing hearing and appeal procedures; and reducing the blood alcohol percentage necessary to raise a presumption of intoxication.

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

Section 1. There is added to chapter 46.20 RCW a new section to read as follows:

(1) Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent, subject to the provisions of section 3 of this initiative, to a chemical test or tests of his breath or blood for the purpose of determining the alcoholic content of his blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor. The test or tests shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor. Such officer shall inform the person of his right to refuse the test, and of his right to have additional tests administered by any qualified person of his choosing as provided in section 3 of this initiative. The officer shall warn the

driver that his privilege to drive will be revoked or denied if he refuses to submit to the test. Unless the person to be tested is unconscious, the chemical test administered shall be of his breath only.

(2) Any person who is dead, unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of section 3 of this initiative.

(3) If, following his arrest, the person arrested refuses upon the request of a law enforcement officer to submit to a chemical test of his breath, after being informed that his refusal will result in the revocation or denial of his privilege to drive, no test shall be given. The department of motor vehicles, upon the receipt of a sworn report of the law enforcement officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor and that the person had refused to submit to the test upon the request of the law enforcement officer after being informed that such refusal would result in the revocation or denial of his privilege to drive, shall revoke his license or permit to drive or any nonresident operating privilege. If the person is a resident without a license or permit to operate a motor vehicle in this state, the department shall deny to the person the issuance of a license or permit for a period of six months after the date of the alleged violation, subject to review as hereinafter provided.

(4) Upon revoking the license or permit to drive or the non-resident operating privilege of any person, or upon determining that the issuance of a license or permit shall be denied to the person, as hereinbefore in this section directed, the department shall immediately notify the person involved in writing by personal service or by registered or certified mail of its decision and the grounds there-

fore, and of his right to a hearing, specifying the steps he must take to obtain a hearing. The person upon receiving such notice may, in writing and within ten days therefrom request a formal hearing. Upon receipt of such request, the department shall afford him an opportunity for a hearing as provided in RCW 46.20.329 and RCW 46.20.332. The scope of such hearing for the purposes of this section shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor, whether the person was placed under arrest and whether he refused to submit to the test upon request of the officer after having been informed that such refusal would result in the revocation or denial of his privilege to drive. The department shall order that the revocation or determination that there should be a denial of issuance either be rescinded or sustained. Any decision by the department revoking a person's driving privilege shall be stayed and shall not take effect while a formal hearing is pending as herein provided or during the pendency of a subsequent appeal to superior court: PROVIDED, That this stay shall be effective only so long as there is no conviction for a moving violation during pendency of the hearing and appeal.

(5) If the revocation or determination that there should be a denial of issuance is sustained after such a hearing, the person whose license, privilege or permit is so affected shall have the right to file a petition in the superior court of the county wherein he resides, or, if a nonresident of this state, where the charge arose, to review the final order of revocation or denial by the department in the manner provided in RCW 46.20.334.

(6) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been revoked, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in

which he has a license.

Sec. 2. Section 27, chapter 121, Laws of 1965 extraordinary session as last amended by section 5, chapter 167, Laws of 1967 and RCW 46.20.311 are each amended to read as follows:

(1) The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a fixed period of more than one year, except as permitted under RCW 46.20.342. Whenever the license of any person is suspended by reason of a conviction or pursuant to RCW 46.20.291, such suspension shall remain in effect and the department shall not issue to such person any new or renewal of license until such person shall give and thereafter maintain proof of financial responsibility for the future as provided in chapter 46.29 RCW.

(2) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked shall not be entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of six months in cases of revocation for refusal to submit to a chemical test under the provisions of section 1 of this initiative, and in all other revocation cases after the expiration of one year from the date on which the revoked license was surrendered to and received by the department, such person may make application for a new license as provided by law, but the department shall not then issue a new license unless it is satisfied after investigation of the driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways, and until such person shall give and thereafter maintain proof of financial responsibility for the future as provided in chapter 46.29 RCW.

Sec. 3. There is added to chapter 46.61 RCW a new section to read as follows:

(1) It is unlawful for any person who is under the influence of or affected by the use of intoxicating liquor or of any narcotic drug to drive or be in actual physical control of a vehicle within

this state.

(2) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of his blood, breath or other bodily substance shall give rise to the following presumptions:

(a) If there was at that time 0.05 per cent or less by weight of alcohol in the person's blood, it shall be presumed that he was not under the influence of intoxicating liquor.

(b) If there was at that time in excess of 0.05 per cent but less than 0.10 per cent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

(c) If there was at that time 0.10 per cent or more by weight of alcohol in the person's blood, it shall be presumed that he was under the influence of intoxicating liquor.

(d) Per cent by weight of alcohol in the blood shall be based upon milligrams of alcohol per one hundred cubic centimeters of blood.

(e) The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor.

(3) Chemical analysis of the person's blood or breath to be considered valid under the provisions of this section shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist is directed to approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence

to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the state toxicologist.

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

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

(6) Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney.

Sec. 4. The director of the department of motor vehicles shall furnish every applicant for a driver's license or a driver's license renewal with a written summary of the provisions of this initiative.

Sec. 5. Section 60, chapter 155, Laws of 1965 extraordinary session and RCW 46.61.505 are each repealed.

Sec. 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected.

Filed in the office of the Secretary of State, February 8, 1968.
Passed by the vote of the people at the November 5, 1968 state general election.
Proclamation signed by the Governor, December 5, 1968 declaring measure effective law.