

(c) When five thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

(2) Provided, however, payments made in settlements of any claims because of bodily injury, death, or property damage arising from such accident shall be credited in reduction of the amounts provided for in this section.

Passed the Senate February 14, 1979.

Passed the House March 2, 1979.

Approved by the Governor March 21, 1979.

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CHAPTER 62

[Engrossed Senate Bill No. 2068]

HABITUAL TRAFFIC OFFENDERS

AN ACT Relating to habitual traffic offenders; amending section 4, chapter 284, Laws of 1971 ex. sess. and RCW 46.65.020; amending section 5, chapter 284, Laws of 1971 ex. sess. and RCW 46.65.030; amending section 8, chapter 284, Laws of 1971 ex. sess. as amended by section 1, chapter 83, Laws of 1973 1st ex. sess. and RCW 46.65.060; amending section 9, chapter 284, Laws of 1971 ex. sess. and RCW 46.65.070; amending section 11, chapter 284, Laws of 1971 ex. sess. as amended by section 1, chapter 138, Laws of 1977 ex. sess. and RCW 46.65.090; amending section 46.04.480, chapter 12, Laws of 1961 and RCW 46.04.480; adding a new section to chapter 284, Laws of 1971 ex. sess. and to chapter 46.65 RCW; repealing section 6, chapter 284, Laws of 1971 ex. sess. and RCW 46.65.040; repealing section 7, chapter 284, Laws of 1971 ex. sess. and RCW 46.65.050; and repealing section 13, chapter 284, Laws of 1971 ex. sess. and RCW 46.65.110.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 4, chapter 284, Laws of 1971 ex. sess. and RCW 46.65.020 are each amended to read as follows:

As used in this chapter, unless a different meaning is plainly required by the context, an habitual offender shall mean any person, resident or nonresident, who has accumulated convictions as defined in RCW 46.20.270 or, if a minor, shall have violations recorded with the department of (~~motor vehicles, or forfeited bait~~) licensing, for separate and distinct offenses as described in either subsection (1) or (2) below committed within a five year period, as evidenced by the records maintained in the department of (~~motor vehicles~~) licensing: PROVIDED, That where more than one described offense shall be committed within a six-hour period such multiple offenses shall, on the first such occasion, be treated as one offense for the purposes of this chapter:

(1) Three or more convictions, singularly or in combination, of the following offenses:

(a) Negligent homicide as defined in RCW 46.61.520; ((or))

(b) Driving or operating a motor vehicle while under the influence of intoxicants or drugs; ((or))

(c) Driving a motor vehicle while his or her license, permit, or privilege to drive has been suspended or revoked; ~~((or))~~

(d) Failure of the driver of any vehicle involved in an accident resulting in the injury or death of any person or damage to any vehicle which is driven or attended by any person to immediately stop such vehicle at the scene of such accident or as close thereto as possible and to forthwith return to and in every event remain at, the scene of such accident until he has fulfilled the requirements of RCW 46.52.020(-); or

(e) Reckless driving as defined in RCW 46.61.500;

(2) Twenty or more convictions ~~((or bail forfeitures))~~ for separate and distinct offenses, singularly or in combination, in the operation of a motor vehicle which are required to be reported to the department of ~~((motor vehicles))~~ licensing other than the offenses of driving with an expired driver's license and not having a driver's license in the operator's immediate possession. Such convictions ~~((or bail forfeitures))~~ shall include those for offenses enumerated in subsection (1) above when taken with and added to those offenses described herein but shall not include convictions ~~((or forfeitures))~~ for any nonmoving violation. No person shall be considered an habitual offender under this subsection unless at least three convictions have occurred within the three hundred sixty-five days immediately preceding the last conviction.

The offenses included in subsections (1) and (2) hereof shall be deemed to include offenses under any valid town, city, or county ordinance substantially conforming to the provisions cited in said subsections (1) and (2) or amendments thereto, and any federal law, or any law of another state, including subdivisions thereof, substantially conforming to the aforesaid state statutory provisions.

Sec. 2. Section 5, chapter 284, Laws of 1971 ex. sess. and RCW 46.65-.030 are each amended to read as follows:

The director of the department of ~~((motor vehicles))~~ licensing shall certify three transcripts or abstracts of the conviction record as maintained by the department of ~~((motor vehicles))~~ licensing of any person whose record brings him or her within the definition of an habitual offender, as defined in RCW 46.65.020, ~~((to the prosecuting attorney of the county in which such person resides according to the records of the department or to the attorney general of the state of Washington if such person is not a resident of this state))~~ to the hearing officer appointed in the event a hearing is requested. Such transcript or abstract may be admitted as evidence in any hearing or court proceeding and shall be prima facie evidence that the person named therein was duly convicted by the court wherein such conviction or holding was made of each offense shown by such transcript or abstract; and if such person shall deny any of the facts as stated therein, he or she shall have the burden of proving that such fact is untrue.

Sec. 3. Section 8, chapter 284, Laws of 1971 ex. sess. as amended by section 1, chapter 83, Laws of 1973 1st ex. sess. and RCW 46.65.060 are each amended to read as follows:

If the ~~((court))~~ department finds that such person is not ~~((the same person named in the aforesaid transcript or abstract or that he is not))~~ an habitual offender under this chapter, the proceeding shall be dismissed, but if the ~~((court))~~ department finds that such person ~~((is the same person named in the aforesaid transcript or abstract and that such person))~~ is an habitual offender, the ~~((court))~~ department shall ~~((so find and by appropriate order direct such person not to operate a motor vehicle on the highways of the state of Washington and to surrender to the court all licenses or permits to operate a motor vehicle on the highways of this state for disposal. The clerk of the court shall file with the department of motor vehicles a copy of such order which shall become a part of the permanent records of the department. Upon receipt of the court order finding such person to be an habitual offender the department of motor vehicles shall))~~ revoke the operator's license for a period of five years: PROVIDED, That ~~((a judge may stay the effective date of the order declaring the person to be a habitual traffic offender))~~ the department may stay the date of the revocation if ~~((he))~~ it finds that the traffic offenses upon which it is based were caused by or are the result of the alcoholism of the person, as defined in RCW 70.96A.020, as now or hereafter amended and that since his or her last offense he or she has undertaken and followed a course of treatment for alcoholism on a program approved by the department of social and health services; ~~((notice of))~~ such stay shall be ~~((entered on the copy of the order filed with))~~ subject to terms and conditions as are deemed reasonable by the department ~~((of motor vehicles))~~. Said stay shall continue as long as there is no further conviction for any of the offenses listed in RCW 46.65.020(1). Upon a subsequent conviction for any offense listed in RCW 46.65.020(1), the stay shall be removed and the department ~~((of motor vehicles))~~ shall revoke the operator's license for a period of five years.

Sec. 4. Section 9, chapter 284, Laws of 1971 ex. sess. and RCW 46.65.070 are each amended to read as follows:

No license to operate motor vehicles in Washington shall be issued to an habitual offender (1) for a period of five years from the date of the ~~((order of the court finding such person to be an habitual offender))~~ license revocation, and (2) until the privilege of such person to operate a motor vehicle in this state has been restored by the department of ~~((motor vehicles))~~ licensing as hereinafter in this chapter provided.

NEW SECTION. Sec. 5. There is added to chapter 284, Laws of 1971 ex. sess. and to chapter 46.65 RCW a new section to read as follows:

(1) Whenever a person's driving record, as maintained by the department, brings him or her within the definition of an habitual traffic offender, as defined in RCW 46.65.020, the department shall forthwith notify such

person of the revocation in writing by certified mail at his or her address of record as maintained by the department. If such person is a nonresident of this state, notice shall be sent to such person's last known address. Notices of revocation shall inform the recipient thereof of his or her right to a formal hearing and specify the steps which must be taken in order to obtain a hearing. The person upon receiving such notice may, in writing and within ten days therefrom request a formal hearing: **PROVIDED**, That if such a request is not made within the prescribed time the right to a hearing shall be deemed to have been waived: **PROVIDED FURTHER**, That a request for a hearing shall stay the effectiveness of the revocation.

(2) Upon receipt of a request for a hearing, the department shall schedule a hearing in the county in which the person making the request resides, and if such person is a nonresident of this state, the hearing shall be held in Thurston county. The department shall give at least ten days notice of the hearing to such person.

(3) The scope of the hearings provided by this section shall be limited to the issues of whether the certified transcripts or abstracts of the convictions, as maintained by the department, show that the requisite number of violations have been accumulated within the prescribed period of time as set forth in RCW 46.65.020 as now or hereafter amended and, whether the terms and conditions for granting stays, as provided in RCW 46.65.060 as now or hereafter amended, have been met.

(4) Upon receipt of the hearing officer's decision, an aggrieved party shall have the right to appeal to the superior court of the county wherein he or she resides, or, in the case of a nonresident of this state, in the superior court of Thurston county for review of the revocation. Notice of appeal must be filed within thirty days after receipt of the hearing officer's decision or the right to appeal shall be deemed to have been waived. Review by the court shall be de novo and without a jury.

(5) The filing of a notice of appeal shall not stay the effective date of the revocation.

Sec. 6. Section 11, chapter 284, Laws of 1971 ex. sess. as amended by section 1, chapter 138, Laws of 1977 ex. sess. and RCW 46.65.090 are each amended to read as follows:

It shall be unlawful for any person to operate a motor vehicle in this state while the order of revocation remains in effect. Any person found to be an habitual offender under the provisions of this chapter who is thereafter convicted of operating a motor vehicle in this state while the order of ~~((the court))~~ revocation prohibiting such operation is in effect shall be guilty of a gross misdemeanor, the punishment for which shall be confinement in the county jail for not more than one year: **PROVIDED**, That any person who is convicted for the offense of operating a motor vehicle while under the influence of intoxicating liquor or drugs as defined in RCW 46.61.506, or the offense of failure to stop and give information or render aid as required in

RCW 46.52.020, and is also convicted of operating a motor vehicle while the order of revocation is in effect, shall be confined in the county jail for not less than thirty days nor more than one year, and such sentence shall not be suspended or deferred.

~~((For the purpose of enforcing this section, in any case in which the accused is charged with driving a motor vehicle while his license, permit, or privilege to drive is suspended or revoked or is charged with driving without a license, the court before hearing such charge shall determine whether such person has been adjudged an habitual offender and by reason of such judgment is barred from operating a motor vehicle on the highways of this state. If the court determines the accused has been so adjudged, the court shall have jurisdiction for trial of the charge.))~~

Sec. 7. Section 46.04.480, chapter 12, Laws of 1961 and RCW 46.04-.480 are each amended to read as follows:

"Revoke," in all its forms, means the invalidation for a period of one calendar year and thereafter until reissue: PROVIDED, That under the provisions of chapter 46.65 RCW the invalidation may last for a period to exceed one calendar year.

NEW SECTION. Sec. 8. If any provision of this 1979 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 9. The following acts or parts of acts are each hereby repealed:

- (1) Section 6, chapter 284, Laws of 1971 ex. sess. and RCW 46.65.040;
 - (2) Section 7, chapter 284, Laws of 1971 ex. sess. and RCW 46.65.050;
- and
- (3) Section 13, chapter 284, Laws of 1971 ex. sess. and RCW 46.65.110.

Passed the Senate February 13, 1979.

Passed the House March 2, 1979.

Approved by the Governor March 21, 1979.

Filed in Office of Secretary of State March 21, 1979.

CHAPTER 63

[Senate Bill No. 2094]

MOTOR VEHICLE OPERATORS—INSTRUCTION PERMITS

AN ACT Relating to motor vehicles; amending section 7, chapter 121, Laws of 1965 ex. sess. as amended by section 8, chapter 218, Laws of 1969 ex. sess. and RCW 46.20.055; amending section 8, chapter 121, Laws of 1965 ex. sess. and RCW 46.20.091; and amending section 4, chapter 25, Laws of 1965 as last amended by section 1, chapter 27, Laws of 1977 and RCW 46.68.041.

Be it enacted by the Legislature of the State of Washington: