

commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, rape in the second degree, kidnapping in the second degree, arson in the second degree, assault in the second degree, extortion in the first degree, ((and)) robbery in the second degree, and ((negligent)) vehicular homicide;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, which is comparable to a felony classified as a violent offense in subsection (17)(a) of this section; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a violent offense under subsection (17)(a) or (b) of this section.

Passed the Senate April 22, 1983.

Passed the House April 17, 1983.

Approved by the Governor May 11, 1983, with the exception of section 3, which is vetoed.

Filed in Office of Secretary of State May 11, 1983.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 3, Engrossed Senate Bill No. 3106, entitled:

"AN ACT Relating to driving while intoxicated."

This bill establishes the crimes of vehicular homicide and vehicular assault and provides for penalties for those crimes.

It is necessary to veto section 3 of ESB 3106 in order to avoid a double amendment to RCW 46.20.285, which was also amended in a more complete manner in section 15 of Engrossed Substitute House Bill No. 289, a bill that I will sign today.

With the exception of section 3, which I have vetoed, Engrossed Senate Bill No. 3106 is approved."

CHAPTER 165

[Engrossed Substitute House Bill No. 289]

DRUNK DRIVING—PROCEDURES AND PENALTIES MODIFIED

AN ACT Relating to driving while intoxicated; amending section 11, chapter 260, Laws of 1981 as amended by section 1 of this act and RCW 46.20.308; amending section 46.04.480, chapter 12, Laws of 1961 as amended by section 7, chapter 62, Laws of 1979 and RCW 46.04.480; amending section 46.04.480, chapter 12, Laws of 1961 as last amended by section 13 of this act and RCW 46.04.480; amending section 24, chapter 121, Laws of 1965 ex. sess. and RCW 46.20.285; amending section 24, chapter 121, Laws of 1965 ex. sess. as amended by section 15 of this act and RCW 46.20.285; amending section 27, chapter 121, Laws of 1965 ex. sess. as last amended by section 5, chapter 212, Laws of 1982 and RCW 46.20.311; amending section 27, chapter 121, Laws of 1965 ex. sess. as last amended by section 17 of this act and RCW 46.20.311; amending section 52, chapter 155, Laws of 1965 ex. sess. as last amended by section 1, chapter ... (SHB 498), Laws of 1983 and RCW 46.61.515; amending section 1, chapter 5, Laws of 1973 as last amended by section 4, chapter ... (ESB 3106), Laws of 1983 and RCW 46.20.391; amending section 1, chapter 5, Laws of 1973 as last amended by section 23 of this act and RCW 46.20.391; amending section 442, chapter 249, Laws of 1909 and RCW 66.44.240;

amending section 441, chapter 249, Laws of 1909 and RCW 66.44.250; amending section 118, chapter 299, Laws of 1961 and RCW 3.66.070; amending section 2, chapter 316, Laws of 1977 ex. sess. as last amended by section 25, chapter 136, Laws of 1981 and RCW 70.48.020; amending section 16, chapter 232, Laws of 1979 ex. sess. and RCW 70.48.180; amending section 35.21.330, chapter 7, Laws of 1965 as amended by section 19, chapter 316, Laws of 1977 ex. sess. and RCW 70.48.190; amending section 17, chapter 232, Laws of 1979 ex. sess. and RCW 70.48.210; amending section 12, chapter 244, Laws of 1975 1st ex. sess. and RCW 10.05.120; adding a new section to chapter 35.21 RCW; adding a new section to chapter 36.32 RCW; adding a new section to chapter 43.59 RCW; adding new sections to chapter 46.20 RCW; adding new sections to chapter 46.61 RCW; adding new sections to chapter 46.68 RCW; adding new sections to chapter 70.48 RCW; creating new sections; prescribing penalties; providing an expiration date; declaring an emergency; and providing effective dates.

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

Sec. 1. Section 11, chapter 260, Laws of 1981 and RCW 46.20.308 are each amended to read as follows:

(1) Any person who operates a motor vehicle upon the public highways of this state (~~(shall be)~~) is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a chemical test or tests of his or her breath or blood for the purpose of determining the alcoholic content of his or her 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))~~ The officer shall inform the person of his or her right to refuse the test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver that his or her privilege to drive will be revoked or denied if he or she refuses to submit to the test. The officer shall warn the driver that his refusal to take the test may be used against him in any subsequent criminal trial.

Unless the person to be tested is unconscious, the chemical test administered shall be of ~~((his))~~ the breath ~~((: PROVIDED, That))~~. If an individual is unconscious or is under arrest for the crime of ((negligent)) vehicular homicide ((by motor vehicle)) as provided in RCW 46.61.520 or vehicular assault as provided in section 2, chapter ... (SB 3106), Laws of 1983, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which another person has been injured and there is a reasonable likelihood that such other person may die as a result of injuries sustained in the accident, a breath or blood test may be

administered without the consent of the individual so arrested. In such circumstances, the provisions of subsections (2) through (6) of this section shall not apply.

(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 RCW 46.61.506.

(3) If, following his or her arrest, the person arrested refuses upon the request of a law enforcement officer to submit to a chemical test of his or her 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 licensing, 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))~~ one year after the date of the alleged violation or for two years if it is the second such refusal in a five-year period, subject to review as hereinafter provided.

(4) Upon revoking the license or permit to drive or the nonresident operating privilege of any person, or upon determining that the issuance of a license or permit shall be denied to the person, as ~~((hereinbefore))~~ directed 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 therefor, and of his right to a hearing, specifying the steps he must take to obtain a hearing. The person upon receiving ~~((such))~~ the 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 46.20.332. The scope of ~~((such))~~ the 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 in this section 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 or no finding that the person has committed a traffic infraction (~~which~~) that is 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~~) has the right to file a petition in the superior court of the county (~~wherein~~) in which he or she 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 or she has a license.

Sec. 2. Section 11, chapter 260, Laws of 1981 as amended by section 1 of this act and RCW 46.20.308 are each amended to read as follows:

(1) Any person who operates a motor vehicle (~~(: on the public highways of)~~) within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a chemical test or tests of his or her breath or blood for the purpose of determining the alcoholic content of his or her 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.

(2) 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)~~) within this state while under the influence of intoxicating liquor. The officer shall inform the person of his or her right to refuse the test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver that (a) his or her privilege to drive will be revoked or denied if he or she refuses to submit to the test (~~(: The officer shall warn the driver)~~), (b) that his or her privilege to drive will be suspended, revoked, or denied if the test is administered and the test indicates a concentration of alcohol in his or her blood of 0.10 percent or more, and (c)

that his or her refusal to take the test may be used against him or her in ~~((any))~~ a subsequent criminal trial.

~~((Unless the person to be tested is unconscious))~~ (3) Except as provided in this subsection and subsection (4) of this section, the chemical test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in section 2, chapter ... (SB 3106), Laws of 1983, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which another person has been injured and there is a reasonable likelihood that such other person may die as a result of injuries sustained in the accident, a breath or blood test may be administered without the consent of the individual so arrested. ((In such circumstances, the provisions of subsections (2) through (6) of this section shall not apply.

~~((2))~~ (4) 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 RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.

~~((3))~~ (5) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a chemical test of his or her breath, ((after being informed that his refusal will result in the revocation or denial of his privilege to drive;)) no test shall be given except as authorized under subsection (3) or (4) of this section. ((The department of licensing, 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 one year after the date of the alleged violation or for two years if it is the second such refusal in a five-year period, subject to review as hereinafter provided:

(4) Upon revoking the license or permit to drive or the nonresident operating privilege of any person, or upon determining that the issuance of a license or permit shall be denied to the person, as directed in this section, 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 therefor, and of his right to a hearing, specifying the steps he must take to obtain a hearing. The person upon receiving the 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 46.20.332. The scope of the 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 provided in this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is 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 has the right to file a petition in the superior court of the county in which he or she 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 or she has a license:))~~

NEW SECTION. Sec. 3. (1) If, after arrest and after the other applicable conditions and requirements of RCW 46.20.308 have been satisfied, a person submits to a chemical test of his or her blood, breath, or other bodily fluids, or such a test has been administered without that person's express consent as permitted by RCW 46.20.308 (3) or (4), and the test results indicate an alcoholic concentration in that person's blood of 0.10 percent or more by weight, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, or deny the person's license, permit, or privilege to drive as required by section 5 of this act;

(b) Confiscate the person's Washington state license or permit to drive, if any;

(c) Issue a temporary license as provided for in subsection (2) of this section to any driver who surrenders a current and valid license; and

(d) Immediately notify the department of licensing of the arrest and transmit to the department of licensing any confiscated license or permit and a sworn report that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both; and

(ii) That after receipt of the warnings required by RCW 46.20.308(2) the person refused to submit, or submitted to chemical testing, or that a test was administered without the person's express consent as permitted under RCW 46.20.308 (3) or (4); and

(iii) That, if a test was administered, the applicable requirements of RCW 46.20.308 were met before administration of the test and that the test was administered in accordance with RCW 46.61.506; and

(iv) That the results of any test administered indicated an alcoholic concentration in that person's blood of 0.10 percent or more.

(2) The department shall provide law enforcement agencies with temporary license forms and written notice statements for use under subsection (1) of this section. Any temporary license issued under subsection (1) of this section shall indicate that it is effective for forty-five days from the arrest or, until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to section 6 of this act, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces.

NEW SECTION. Sec. 4. (1) The department shall suspend, revoke, or deny the arrested person's driving privileges as follows:

(a) In the case of a person who has refused a test:

(i) For a first refusal within five years, revocation or denial for one year;

(ii) For a second refusal within five years, revocation or denial for two years.

(b) In the case of a person who has submitted to or been administered a test indicating a blood alcohol concentration of 0.10 percent or more:

(i) For a first incident within five years, suspension or denial for ninety days;

(ii) For a second incident within five years, revocation or denial for one year;

(iii) For a third incident within five years, revocation or denial for two years.

(c) A suspension, revocation, or denial shall take effect when sustained at a hearing under section 6 of this act, or forty-five days after the person's arrest if no hearing was requested, whichever occurs first.

(2) The department shall not grant or reinstate a person's privilege to drive that has been suspended, revoked, or denied under subsection (1) of this section until it has determined the person is eligible for reinstatement under RCW 46.20.031 and 46.61.515 and is otherwise qualified.

(3) For purposes of this section and section 5 of this act, driving privileges include:

- (a) A Washington state driver's license or permit;
- (b) A nonresident privilege to drive; and
- (c) The privilege of a person to apply for a new or duplicate license or permit or to renew a license, permit, or nonresident privilege.

NEW SECTION. Sec. 5. No suspension, revocation, or denial of a driving privilege under section 4 of this act is effective until the department of licensing or a law enforcement officer acting on its behalf notifies the person in writing by personal service, by certified mail, or by first class mail addressed to that person's last known address of record with the department of the department's intention to suspend, revoke, or deny together with the grounds therefor and allows the person a seven-day period to request in writing that the department provide a hearing as provided in section 6 of this act. The notice shall specify the steps the person must take to obtain a hearing. If no written request for a hearing is postmarked or delivered to the department within seven days from the date of notification, the department shall issue an order effective as provided in section 4 of this act. If a request for a hearing is filed in time, the department shall give the person an opportunity for a hearing as provided in section 6 of this act.

NEW SECTION. Sec. 6. (1) Administrative hearings held to determine the propriety of any suspension, revocation, or denial imposed under section 4 of this act shall be in accordance with rules adopted by the director.

(2) The department shall fix a time, no more than forty-five days after arrest, and a place for a hearing to be held in the county in which the arrest was made that resulted in a report being transmitted under section 3 of this act. The hearing may be set for some other county by agreement between the department and the person. If the hearing is not held and an order issued under section 8 of this act within forty-five days after arrest, the suspension, revocation, or denial under section 4 of this act shall not be imposed.

(3) The department shall give the person at least fourteen days advance notice of the time and place of hearing, but the period of notice may be waived by the person. RCW 46.20.332 and 46.20.333 apply to the hearings. The department shall issue a subpoena upon the request of any party and, to the extent required by department rule, upon a statement showing the

general relevance and reasonable scope of the evidence sought. The subpoena may be issued with like effect by the person's attorney of record or the office of the attorney general, and the form of the subpoena in each case may be the same as when issued by the agency, except that it shall only be subscribed by the signature of the person's attorney or an assistant attorney general. Every party has the right of cross-examination of any witness who testifies and has the right to submit rebuttal evidence. Subpoenas issued under this section may be enforced in the manner provided by RCW 34.04.105(5).

(4) With respect to arrested drivers who have submitted to or been administered chemical tests, the department by rule may permit the admission into evidence at the hearing of (a) copies of official reports of persons who possess a valid permit or certificate from the state toxicologist to perform tests or chemical analyses of the blood or breath, as to results of particular tests or analyses performed by that person when the copies have been certified as true copies of the report by the writer of the report, under oath, and (b) certificates of Breathalyzer maintenance operators who possess a valid permit or certificate from the state toxicologist, as to the testing and calibration of Breathalyzers or similar machines by that person. The reports or certificates may be admitted without further proof or foundation as prima facie evidence of the facts stated in them unless the arrested driver has given written notice received by the department not less than seven days before the date set for the hearing that he or she requests that the person administering the test, or the Breathalyzer maintenance operator, be produced by the department at the hearing.

NEW SECTION, Sec. 7. The scope of the administrative hearing under section 6 of this act shall include:

(1) With respect to a person who has refused a chemical test, the issues of:

(a) 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 within this state while under the influence of intoxicating liquor;

(b) Whether the person was placed under arrest; and

(c) Whether the person 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 or her privilege to drive and that the person had the right to additional tests.

(2) With respect to a person upon whom a chemical test was administered, the issues of:

(a) 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 within this state while under the influence of intoxicating liquor;

(b) Whether the person was placed under arrest;

(c) Whether the applicable requirements of RCW 46.20.308 were satisfied before the administration of the chemical test;

(d) Whether the person either submitted to the test or a test was administered without express consent as permitted under RCW 46.20.308; and

(e) Whether the test indicated a concentration of alcohol in the person's blood of 0.10 percent, or more. The person may challenge whether the testing methods used were in accordance with RCW 46.61.506 and were valid and reliable.

NEW SECTION. Sec. 8. After a hearing held under section 6 of this act, the department shall order that the appropriate suspension, revocation, or denial of privileges be imposed effective ten days after receipt of the order. In the alternative, the department may order that the administrative action be dismissed.

NEW SECTION. Sec. 9. (1) If the suspension, revocation, or denial imposed by the department under section 4 of this act is sustained after a hearing, the person whose license, permit, or privilege is affected has the right to file a petition in the superior court of the county of arrest or the county in which the person resides or, if a nonresident of this state, the superior court of Thurston county, for review of the final order of suspension, revocation, or denial by the department. The petition shall be filed within ten days following receipt by the person of the department's final order, or the right to appeal is deemed to have been waived. The review shall be conducted by the court without a jury, and shall be confined to the record, except that in cases of alleged irregularities in procedure before the department, not shown in the record, testimony on that issue may be taken in court. The scope of the review is limited to that prescribed by RCW 7.16.120, governing writs of certiorari.

(2) The filing of the appeal does not stay the effective date of the suspension, revocation, or denial unless it is stayed by the court after motion and argument. Such a stay may be granted only if the court finds upon the arguments and affidavits presented that there is a reasonable probability that the petitioner will prevail upon the merits of the petition, that the public interest will not be substantially harmed by the stay, and that the petitioner will suffer irreparable harm if the order is not stayed. If such a stay is granted it shall provide that it is effective only so long as there is no conviction of the petitioner for a moving violation or no finding that the petitioner has committed a traffic infraction which is a moving violation during the pendency of the appeal.

(3) The court may affirm the department's decision, remand the matter for further administrative proceedings, or reverse the department's order of suspension, revocation, or denial.

(4) The actual costs of preparing and transmitting the record to superior court shall be borne by the petitioner and awarded by the court to the department if the department's decision is affirmed. The costs shall be borne by the department if the department's decision is remanded or reversed.

NEW SECTION. Sec. 10. When it has been finally determined under the procedures of sections 4 through 8 of this act that a nonresident's privilege to operate a motor vehicle in this state has been suspended or 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 the person has a driver's license.

NEW SECTION. Sec. 11. When the department is required to suspend, revoke, or deny a person's license, permit, or nonresident privilege to drive under either section 4 of this act or under RCW 46.61.515(5), and (1) the department has earlier imposed a suspension, revocation, or denial under the other of those two provisions or is preparing to do so, and (2) each of those two sanctions has been required as the result of civil or criminal proceedings arising from the same arrest, the department shall proceed as follows:

(a) If the civil and criminal sanctions imposed or to be imposed are for the same minimum length of time, the suspension, revocation, or denial imposed by the department is limited to that first imposed and fully effective under one of those provisions;

(b) If the civil and criminal sanctions are of different minimum lengths of time, the department shall impose the sanction of longer duration. If the sanction with the shorter minimum duration has earlier been imposed by the department, the department shall reduce the minimum duration of the longer revocation by the number of days the license, permit, or privilege to drive was actually under suspension, revocation, or denial pursuant to the earlier action by the department.

If a suspension, revocation, or denial of a person's license, permit, or nonresident privilege to drive would have been imposed by the department under section 4 of this act but for the operation of this section, the suspension, revocation, or denial shall be treated as if it had been imposed for the purposes of determining the minimum duration of subsequent suspensions or revocations required under that section.

NEW SECTION. Sec. 12. (1) The director, or his or her designee, shall administer and enforce the provisions of sections 3 through 11 of this act. The director may adopt such rules as he or she deems necessary to carry out the purposes of sections 3 through 11 of this act.

(2) The department shall prescribe and provide such forms as it deems necessary or desirable to carry out the purposes of sections 3 through 11 of this act.

Sec. 13. Section 46.04.480, chapter 12, Laws of 1961 as amended by section 7, chapter 62, Laws of 1979 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 RCW 46.20.285, 46.20.311, or 46.61.515 and chapter 46.65 RCW the invalidation may last for a period ((to exceed)) other than one calendar year.

Sec. 14. Section 46.04.480, chapter 12, Laws of 1961 as last amended by section 13 of this act 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 RCW 46.20.285, 46.20.311, ((or)) 46.61.515, or section 4 of this act and chapter 46.65 RCW the invalidation may last for a period other than one calendar year.

Sec. 15. Section 24, chapter 121, Laws of 1965 ex. sess. and RCW 46.20.285 are each amended to read as follows:

The department shall forthwith revoke the license of any driver for the period of one calendar year unless otherwise provided in this section, upon receiving a record of ((such)) the driver's conviction of any of the following offenses, when ((such)) the conviction has become final:

(1) ((Manslaughter (or negligent)) For vehicular homicide((-)resulting from the operation of a motor vehicle)) the period of revocation shall be two years;

(2) Vehicular assault;

(3) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle, upon a showing by the department's records that the conviction is the ((third)) second such conviction ((of such)) for the driver within a period of five years. Upon a showing that the conviction is the third such conviction for the driver within a period of five years, the period of revocation shall be two years;

((3)) (4) Any felony in the commission of which a motor vehicle is used;

((4)) (5) Failure to stop and give information or render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

((5)) (6) Perjury or the making of a false affidavit or statement under oath to the department under Title 46 RCW or under any other law relating to the ownership or operation of motor vehicles;

~~((6))~~ (7) Reckless driving upon a showing by the department's records that the conviction is the third such conviction ~~((of such))~~ for the driver within a period of two years.

Sec. 16. Section 24, chapter 121, Laws of 1965 ex. sess. as amended by section 15 of this act and RCW 46.20.285 are each amended to read as follows:

The department shall forthwith revoke the license of any driver for the period of one year unless otherwise provided in this section, upon receiving a record of the driver's conviction of any of the following offenses, when the conviction has become final:

- (1) For vehicular homicide the period of revocation shall be two years;
- (2) Vehicular assault;
- (3) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle, upon a showing by the department's records that the conviction is the second such conviction for the driver within a period of five years. Upon a showing that the conviction is the third such conviction for the driver within a period of five years, the period of revocation shall be two years. A revocation imposed under this subsection shall run concurrently with any corresponding revocation which may be imposed by the department pursuant to section 4 of this act or RCW 46.61.515(5) arising out of the same arrest;
- (4) Any felony in the commission of which a motor vehicle is used;
- (5) Failure to stop and give information or render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;
- (6) Perjury or the making of a false affidavit or statement under oath to the department under Title 46 RCW or under any other law relating to the ownership or operation of motor vehicles;
- (7) Reckless driving upon a showing by the department's records that the conviction is the third such conviction for the driver within a period of two years.

Sec. 17. Section 27, chapter 121, Laws of 1965 ex. sess. as last amended by section 5, chapter 212, Laws of 1982 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 or 46.61.515. Whenever the license of any person is suspended by reason of a conviction, a finding that a traffic infraction has been committed, or pursuant to RCW 46.20.291, ~~((such))~~ the suspension shall remain in effect and the department shall not issue to ~~((such))~~ the person any new, duplicate, or renewal ~~((of))~~ license until ~~((such))~~ the person ~~((shall))~~ pays a reinstatement fee of twenty

dollars and ~~((shall))~~ gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, the reinstatement fee shall be fifty dollars.

(2) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked ~~((shall))~~, unless the revocation was for a cause which has been removed, is not ~~((be))~~ entitled to have ~~((such))~~ the 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 RCW 46.20.308 as now or hereafter amended, and in all other revocation cases))~~ until: (a) After the expiration of one year from the date on which the revoked license was surrendered to and received by the department ~~((such))~~; (b) after the expiration of the applicable revocation period provided by RCW 46.61.515(5) (b) or (c); (c) after the expiration of two years for persons convicted of vehicular homicide; (d) after the expiration of one year in cases of revocation for the first refusal within five years to submit to a chemical test under RCW 46.20.308; or (e) after the expiration of two years in cases of revocation for the second refusal within five years to submit to a chemical test under RCW 46.20.308. After the expiration of the appropriate period, the person may make application for a new license as provided by law together with ~~((an additional))~~ a reinstatement fee in the amount of twenty dollars, but if the revocation is the result of a violation of RCW 46.20.308, 46.61.502, or 46.61.504, the reinstatement fee shall be fifty dollars. The department shall not then issue a new license unless it is satisfied after investigation of the driving ability of ~~((such))~~ the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways, and until ~~((such))~~ the person ~~((shall))~~ gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. A resident without a license or permit whose license or permit was denied under RCW 46.20.308(3) shall give and thereafter maintain proof of financial responsibility for the future as provided in chapter 46.29 RCW.

(3) Whenever the driver's license of any person is suspended pursuant to Article IV of the nonresident violators compact or RCW 46.23.020, the suspension shall remain in effect and the department shall not issue to the person any new or renewal license until the person ~~((shall))~~ pays a reinstatement fee of twenty dollars. If the suspension is the result of a violation of the laws of another state, province, or other jurisdiction involving (a) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (b) the refusal to submit to a chemical test of the driver's blood alcohol content, the reinstatement fee shall be fifty dollars.

Sec. 18. Section 27, chapter 121, Laws of 1965 ex. sess. as last amended by section 17 of this act 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 or 46.61.515. Whenever the license of any person is suspended by reason of a conviction, a finding that a traffic infraction has been committed, or pursuant to RCW 46.20.291, the suspension shall remain in effect and the department shall not issue to the person any new, duplicate, or renewal license until the person pays a reinstatement fee of twenty dollars and gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504 or was imposed under section 4 (1) (a) or (b) of this act, the reinstatement fee shall be fifty dollars.

(2) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked, unless the revocation was for a cause which has been removed, is not entitled to have the license or privilege renewed or restored until: (a) After the expiration of one year from the date on which the revoked license was surrendered to and received by the department; (b) after the expiration of the applicable revocation period provided by RCW 46.61.515(5) (b) or (c); (c) after the expiration of two years for persons convicted of vehicular homicide; (d) after the expiration of one year in cases of revocation for the first refusal within five years to submit to a chemical test under RCW 46.20.308; or (e) after the expiration of two years in cases of revocation for the second refusal within five years to submit to a chemical test under RCW 46.20.308. After the expiration of the appropriate period, the person may make application for a new license as provided by law together with a reinstatement fee in the amount of twenty dollars, but if the revocation is the result of a violation of RCW 46.20.308, 46.61.502, or 46.61.504, the reinstatement fee shall be fifty dollars. The department shall not then issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways, and until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. A resident without a license or permit whose license or permit was denied under ~~((RCW 46.20.308(3)))~~ section 4 of this act shall give and thereafter maintain proof of financial responsibility for the future as provided in chapter 46.29 RCW.

(3) Whenever the driver's license of any person is suspended pursuant to Article IV of the nonresident violators compact or RCW 46.23.020, the suspension shall remain in effect and the department shall not issue to the person any new or renewal license until the person pays a reinstatement fee of twenty dollars. If the suspension is the result of a violation of the laws of

another state, province, or other jurisdiction involving (a) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (b) the refusal to submit to a chemical test of the driver's blood alcohol content, the reinstatement fee shall be fifty dollars.

NEW SECTION. Sec. 19. There is added to chapter 46.68 RCW a new section to read as follows:

(1) Until July 1, 1984, thirty dollars of any driver's license reinstatement fee paid under RCW 46.20.311 when the suspension or revocation was for a violation involving (a) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (b) the refusal to submit to a chemical test of the driver's blood alcohol content, shall be deposited by the department in the DWI impact account, hereby created, of the general fund.

(2) By December 31, 1983, and by August 1, 1984, the office of financial management shall distribute the proceeds of the DWI impact account to the counties for the increased needs of the courts, the prosecuting attorneys, the public defenders, and local law enforcement in handling cases involving driving while intoxicated. To receive a grant from the DWI impact account, a county shall establish, to the satisfaction of the office of financial management, its need for the funds, that a satisfactory effort by the county is being maintained to the extent possible with available funds, and that local resources have been exhausted.

(3) In making grants from the DWI impact account, the office of financial management shall consider the following:

(a) The number of arrests for driving while intoxicated made in the county in the immediately preceding fiscal year;

(b) The percentage of change over the corresponding number for the second preceding fiscal year;

(c) The judicial caseload predicted by the administrator for the courts for the current fiscal year;

(d) Increases in financial support provided by counties for enforcement and conviction relating to offenses involving driving while intoxicated; and

(e) The increase in efforts of law enforcement agencies to arrest persons violating laws against driving while intoxicated.

(4) This section shall expire on August 31, 1984.

NEW SECTION. Sec. 20. There is added to chapter 46.68 RCW a new section to read as follows:

After June 30, 1984, thirty dollars of any driver's license reinstatement fee paid under RCW 46.20.311 when the suspension or revocation was for a violation involving (a) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (b) the refusal to submit to a chemical test of the driver's blood alcohol content, shall be deposited by the department in the highway safety

fund for the exclusive use of the department in implementing sections 3 through 12 of this act.

Sec. 21. Section 62, chapter 155, Laws of 1965 ex. sess. as last amended by section 1, chapter ... (SHB 498), Laws of 1983 and RCW 46.61.515 are each amended to read as follows:

(1) Every person who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be punished by imprisonment for not less than twenty-four consecutive hours nor more than one year, and by a fine of not more than ~~((five))~~ seven hundred fifty dollars. Twenty-four consecutive hours of the jail sentence shall not be suspended or deferred unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being. Whenever the mandatory jail sentence is suspended or deferred, the judge must state, in writing, the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. The court may impose conditions of probation that may include nonrepetition, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The convicted person shall, in addition, be required to complete a course in an alcohol information school approved by the department of social and health services or more intensive treatment in a program approved by the department of social and health services, as determined by the court. A diagnostic evaluation and treatment recommendation shall be prepared under the direction of the court by an alcoholism agency approved by the department of social and health services or a qualified probation department approved by the department of social and health services. A copy of the report shall be forwarded to the department of licensing. Based on the diagnostic evaluation, the court shall determine whether the convicted person shall be required to complete a course in an alcohol information school approved by the department of social and health services or more intensive treatment in a program approved by the department of social and health services. Standards for approval for alcohol treatment programs shall be prescribed by rule under the administrative procedure act, chapter 34.04 RCW. The courts shall periodically review the costs of alcohol information schools and treatment programs within their jurisdictions.

(2) On a second or subsequent conviction for driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs within a five-year period a person shall be punished by imprisonment for not less than seven days nor more than one year and by a fine of not more than one thousand five hundred dollars. District courts and courts organized under chapter 35.20 RCW are authorized to impose such fine. The jail sentence shall not be suspended or deferred unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being. Whenever the mandatory jail sentence is suspended or deferred, the judge must state, in writing, the reason for

granting the suspension or deferral and the facts upon which the suspension or deferral is based. If, at the time of a second or subsequent conviction, the driver is without a license or permit because of a previous suspension or revocation, the minimum mandatory sentence shall be ninety days in jail and a two hundred dollar fine. The penalty so imposed shall not be suspended or deferred. The person shall, in addition, be required to complete a diagnostic evaluation by an alcoholism agency approved by the department of social and health services or a qualified probation department approved by the department of social and health services. The report shall be forwarded to the department of licensing. If the person is found to have an alcohol or drug problem requiring treatment, the person shall complete treatment at an approved alcoholism treatment facility or approved drug treatment center.

In addition to any nonsuspendable and nondeferrable jail sentence required by this subsection, the court shall sentence a person to a term of imprisonment not exceeding one hundred eighty days and shall suspend but shall not defer the sentence for a period not exceeding two years. The suspension of the sentence may be conditioned upon nonrepetition, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of suspension during the suspension period.

(3) There shall be levied and paid into the highway safety fund of the state treasury a penalty assessment in the minimum amount of twenty-five percent of, and which shall be in addition to, any fine, bail forfeiture, or costs on all offenses involving a violation of any state statute or city or county ordinance relating to driving a motor vehicle while under the influence of intoxicating liquor or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor. All funds derived from the penalty assessment are in addition to and exclusive of assessments made under RCW 46.81.030 and are for the exclusive use of the department for driver services programs and for a state-wide alcohol safety action program, or other similar programs designed primarily for the rehabilitation or control of traffic offenders. The penalty assessment shall be included in any bail schedule and shall be included by the court in any pronouncement of sentence.

(4) Notwithstanding the provisions contained in chapters 3.16, 3.46, 3.50, 3.62, or 35.20 RCW, or any other section of law, the penalty assessment provided for in subsection (3) of this section shall not be suspended, waived, modified, or deferred in any respect, and all moneys derived from the penalty assessments shall be forwarded to the highway safety fund to be used exclusively for the purposes set forth in subsection (3) of this section.

(5) The license or permit to drive or any nonresident privilege of any person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs shall:

(a) On the first conviction under either offense, be suspended by the department until the person reaches age nineteen or for ((not less than thirty) ninety days~~((: PROVIDED, That the court may recommend that no suspension action be taken))~~, which is longer. The department of licensing shall determine the person's eligibility for licensing based upon the reports provided by the designated alcoholism agency or probation department and shall deny reinstatement until enrollment and participation in an approved program has been established and the person is otherwise qualified;

(b) On a second conviction under either offense within a five-year period, be ~~((suspended))~~ revoked by the department for ~~((not less than sixty days))~~ one year. The department of licensing shall determine the person's eligibility for licensing based upon the reports provided by the designated alcoholism agency or probation department and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified;

(c) On a third or subsequent conviction ~~((under either such offense))~~ of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs, vehicular homicide, or vehicular assault, or any combination thereof within a five-year period, be revoked by the department for two years.

(6) In any case provided for in this section, where a driver's license is to be revoked or suspended, the revocation or suspension shall be stayed and shall not take effect until after the determination of any appeal from the conviction which may lawfully be taken, but in case the conviction is sustained on appeal the revocation or suspension takes effect as of the date that the conviction becomes effective for other purposes.

NEW SECTION. Sec. 22. There is added to chapter 46.20 RCW a new section to read as follows:

A suspension or revocation of the license, permit, or nonresident privilege to drive that is required to be imposed by the department of licensing under RCW 46.61.515 shall be coordinated by the department with any suspension or revocation which has been imposed by the department following any civil action it may have taken pursuant to sections 3 through 12 of this act arising out of the same arrest, as required by section 11 of this act.

Sec. 23. Section 1, chapter 5, Laws of 1973 as last amended by section 4, chapter ... (ESB 3106), Laws of 1983 and RCW 46.20.39) are each amended to read as follows:

(1) Any person licensed under this chapter who is convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than vehicular homicide or vehicular assault, may petition the court for a stay of the effect of the mandatory suspension or revocation for the purpose of submitting to the department an application for an occupational driver's license. The court upon determining that the petitioner is engaged in an occupation or trade ~~((which))~~ that

makes it essential that the petitioner operate a motor vehicle may stay the effect of the mandatory suspension or revocation, notwithstanding RCW 46.20.270, for a period of not more than thirty days and may set definite restrictions as ~~((to hours of the day which may not exceed twelve hours in any one day, days of the week, type of occupation, and areas or routes of travel permitted under the occupational driver's license))~~ provided in section 25 of this act. No person may petition for, and the court may not order, a stay affecting the first thirty days of any suspension or revocation imposed under RCW 46.61.515.

(2) An applicant for an occupational driver's license is eligible to receive such license only if:

(a) Within one year immediately preceding the present conviction the applicant has not been convicted of any offense relating to motor vehicles for which suspension or revocation of a driver's license is mandatory; and

(b) Within five years immediately preceding the present conviction the applicant has not been convicted more than once of driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor under RCW 46.61.502 or 46.61.504, of vehicular homicide under RCW 46.61.520, or of vehicular assault under section 2 ~~((of this act)),~~ chapter ... (ESB 3106), Laws of 1983; and

(c) The applicant is engaged in an occupation or trade ~~((which))~~ that makes it essential that he or she operate a motor vehicle; and

(d) The applicant files satisfactory proof of financial responsibility pursuant to chapter 46.29 RCW.

(3) The department, upon receipt of an application and the prescribed fee, may issue an occupational driver's license to any person eligible under this section ~~((for a period of not more than one year which))~~ that permits the operation of a motor vehicle only within the limits established by the court and only when the operation is essential to the licensee's occupation or trade. No person may apply for, and the department may not issue, an occupational license for the first thirty days of any suspension or revocation imposed under RCW 46.61.515.

(4) The director shall cancel an occupational driver's license upon receipt of notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, or of an offense ~~((which))~~ that pursuant to chapter 46.20 RCW would warrant suspension or revocation of a regular driver's license. The cancellation is effective as of the date of the conviction, and continues with the same force and effect as any suspension or revocation under this title.

Sec. 24. Section 1, chapter 5, Laws of 1973 as last amended by section 23 of this act and RCW 46.20.391 are each amended to read as follows:

(1) Any person licensed under this chapter whose driving privilege has been suspended or revoked under section 4(1)(b)(i) of this act or who is convicted of an offense relating to motor vehicles for which suspension or

revocation of the driver's license is mandatory, other than vehicular homicide or vehicular assault, may ~~((petition the court for a stay of the effect of the mandatory suspension or revocation for the purpose of submitting))~~ submit to the department an application for an occupational driver's license. The ((court)) department, upon receipt of the prescribed fee and upon determining that the petitioner is engaged in an occupation or trade that makes it essential that the petitioner operate a motor vehicle, may ((stay the effect of the mandatory suspension or revocation, notwithstanding RCW 46.20.270, for a period of not more than thirty days)) issue an occupational driver's license and may set definite restrictions as provided in section ((25)) 26 of this act. No person may petition for, and the ((court may not order, a stay affecting)) department shall not issue, an occupational driver's license that is effective during the first thirty days of any suspension or revocation imposed under RCW 46.61.515 or pursuant to section 4(1)(b)(i) of this act. A person aggrieved by the decision of the department on the application for an occupational driver's license may request a hearing as provided by rule of the department.

(2) An applicant for an occupational driver's license is eligible to receive such license only if:

(a) Within one year immediately preceding the present conviction or administrative action, the applicant has not been convicted of any offense relating to motor vehicles for which suspension or revocation of a driver's license is mandatory; and

(b) Within five years immediately preceding the present conviction or administrative action, the applicant has not been convicted more than once of driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor under RCW 46.61.502 or 46.61.504, of vehicular homicide under RCW 46.61.520, or of vehicular assault under section 2, chapter ... (ESB 3106), Laws of 1983, or had a license administratively suspended or revoked under section 4 of this act; and

(c) The applicant is engaged in an occupation or trade that makes it essential that he or she operate a motor vehicle; and

(d) The applicant files satisfactory proof of financial responsibility pursuant to chapter 46.29 RCW.

(3) ~~((The department, upon receipt of an application and the prescribed fee, may issue an occupational driver's license to any person eligible under this section that permits the operation of a motor vehicle only within the limits established by the court and only when the operation is essential to the licensee's occupation or trade. No person may apply for, and the department may not issue, an occupational license for the first thirty days of any suspension or revocation imposed under RCW 46.61.515.~~

(4)) The director shall cancel an occupational driver's license upon receipt of notice that the holder thereof has had a driver's license administratively suspended or revoked under section 4 of this act or has been convicted

of operating a motor vehicle in violation of its restrictions, or of an offense that pursuant to chapter 46.20 RCW would warrant suspension or revocation of a regular driver's license. The cancellation is effective as of the date of the conviction or administrative action, and continues with the same force and effect as any suspension or revocation under this title.

NEW SECTION. Sec. 25. There is added to chapter 46.20 RCW a new section to read as follows:

In issuing an order staying the mandatory suspension or revocation of a person's driver's license so that the person may apply for an occupational driver's license under RCW 46.20.391, the court shall describe the type of occupation permitted and shall set forth in detail the specific hours of the day during which the person may drive to and from his place of work, which may not exceed twelve hours in any one day; the days of the week during which the license may be used; and the general routes over which the person may travel.

Any restrictions shall be prepared in written form by the department, which document shall be carried in the vehicle at all times and presented to a law enforcement officer under the same terms as the occupational driver's license. Any violation of the restrictions constitutes a violation of RCW 46.20.342 and subjects the person to all procedures and penalties therefor.

NEW SECTION. Sec. 26. There is added to chapter 46.20 RCW a new section to read as follows:

In issuing an occupational driver's license under RCW 46.20.391, the department shall describe the type of occupation permitted and shall set forth in detail the specific hours of the day during which the person may drive to and from his place of work, which may not exceed twelve hours in any one day; the days of the week during which the license may be used; and the general routes over which the person may travel. These restrictions shall be prepared in written form by the department, which document shall be carried in the vehicle at all times and presented to a law enforcement officer under the same terms as the occupational driver's license. Any violation of the restrictions constitutes a violation of RCW 46.20.342 and subjects the person to all procedures and penalties therefor.

NEW SECTION. Sec. 27. There is added to chapter 46.61 RCW a new section to read as follows:

The refusal of a person to submit to a test of the alcoholic content of his blood under RCW 46.20.308 is admissible into evidence at a subsequent criminal trial without any comment and with a jury instruction, where applicable, that there shall be no speculation as to the reason for the refusal and that no inference is to be drawn from the refusal.

NEW SECTION. Sec. 28. There is added to chapter 46.61 RCW a new section to read as follows:

(1) It is a traffic infraction to drink any alcoholic beverage in a motor vehicle when the vehicle is upon a highway.

(2) It is a traffic infraction for a person to have in his possession while in a motor vehicle upon a highway, a bottle, can, or other receptacle containing an alcoholic beverage if the container has been opened or a seal broken or the contents partially removed.

(3) It is a traffic infraction for the registered owner of a motor vehicle, or the driver if the registered owner is not then present in the vehicle, to keep in a motor vehicle when the vehicle is upon a highway, a bottle, can, or other receptacle containing an alcoholic beverage which has been opened or a seal broken or the contents partially removed, unless the container is kept in the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle does not have a trunk. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

(4) This section does not apply to a public conveyance that has been commercially chartered for group use or to the living quarters of a motor home or camper or, except as otherwise provided by RCW 66.44.250 or local law, to any passenger for compensation in a for-hire vehicle licensed under city, county, or state law.

Sec. 29. Section 442, chapter 249, Laws of 1909 and RCW 66.44.240 are each amended to read as follows:

Every person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who ~~((shall))~~ knowingly permits any person to drink any intoxicating liquor in any public conveyance, except in the compartment where such liquor is sold or served under the authority of a license lawfully issued, ~~((shall be))~~ is guilty of a misdemeanor. This section does not apply to a public conveyance that is commercially chartered for group use or a for-hire vehicle licensed under city, county, or state law.

Sec. 30. Section 441, chapter 249, Laws of 1909 and RCW 66.44.250 are each amended to read as follows:

Every person who ~~((shall))~~ drinks any intoxicating liquor in any public conveyance, except in a compartment or place where sold or served under the authority of a license lawfully issued, ~~((shall be))~~ is guilty of a misdemeanor. With respect to a public conveyance that is commercially chartered for group use and with respect to a for-hire vehicle licensed under city, county, or state law, this section applies only to the driver of the vehicle.

NEW SECTION. Sec. 31. The administrator for the courts may assign one or more justices from other judicial districts to serve as visiting justices in a judicial district which the administrator determines is experiencing an increase in case filings as the result of enhanced enforcement of laws related to driving, or being in physical control of, a motor vehicle while intoxicated.

The prosecuting, city, or town attorney of the county, city, or town in which a judicial district lies, or the presiding judge of the judicial district, may request the administrator for the courts to designate the district as an enhanced enforcement district and to make assignments under this section. An assignment shall be for a specified period of time not to exceed thirty days. A visiting justice has the same powers as a justice of the district to which he or she is assigned. A visiting justice shall be reimbursed for expenses under RCW 2.56.070.

Sec. 32. Section 118, chapter 299, Laws of 1961 and RCW 3.66.070 are each amended to read as follows:

All criminal actions shall be brought in the justice court district where the alleged violation occurred: PROVIDED, That (1) the prosecuting attorney may file felony cases in the district in which the county seat is located ((and)), (2) with the consent of the defendant criminal actions other than those arising out of violations of city ordinances may be brought in or transferred to the district in which the county seat is located, and (3) if the alleged violation relates to driving, or being in actual physical control of, a motor vehicle while intoxicated and the alleged violation occurred within a judicial district which has been designated an enhanced enforcement district under section 31 of this act, the charges may be filed in that district or in a district within the same county which is adjacent to the district in which the alleged violation occurred.

NEW SECTION. Sec. 33. There is added to chapter 46.61 RCW a new section to read as follows:

A sentencing court may allow persons convicted of violating RCW 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in RCW 46.61.515 (1) or (2) in nonconsecutive or intermittent time periods. However, the first twenty-four hours of any sentence under RCW 46.61.515(1) and the first forty-eight hours of any sentence under RCW 46.61.515(2) shall be served consecutively unless suspended or deferred as otherwise provided by law.

Sec. 34. Section 2, chapter 316, Laws of 1977 ex. sess. as last amended by section 25, chapter 136, Laws of 1981 and RCW 70.48.020 are each amended to read as follows:

As used in this chapter the words and phrases in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Holding facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the temporary housing of such persons during or after trial and/or sentencing, but in no instance shall the housing exceed thirty days.

(2) "Detention facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult

persons charged with a criminal offense prior to trial or sentencing and for the housing of adult persons for purposes of punishment and correction after sentencing or persons serving terms not to exceed ninety days.

(3) "Special detention facility" means a minimum security facility operated by a governing unit primarily designed, staffed, and used for the housing of special populations of sentenced persons who do not require the level of security normally provided in detention and correctional facilities including, but not necessarily limited to, persons convicted of offenses under RCW 46.61.502 or 46.61.504.

(4) "Correctional facility" means a facility operated by a governing unit primarily designed, staffed, and used for the housing of adult persons serving terms not exceeding one year for the purposes of punishment, correction, and rehabilitation following conviction of a criminal offense.

~~((4))~~ (5) "Jail" means any holding, detention, or correctional facility as defined in this section.

~~((5))~~ (6) "Health care" means preventive, diagnostic, and rehabilitative services provided by licensed health care professionals and/or facilities; such care to include providing prescription drugs where indicated.

~~((6))~~ (7) "Commission" means the state jail commission created pursuant to RCW 70.48.030 but, after June 30, 1983, "commission" and "state jail commission" means the state corrections standards board.

~~((7))~~ (8) "Substantially remodeled" means significant alterations made to the physical plant of a jail to conform with the physical plant standards.

~~((8))~~ (9) "Department" means the department of social and health services.

~~((9))~~ (10) "Secretary" means the secretary of social and health services.

~~((10))~~ (11) "Governing unit" means the city and/or county or any combinations of cities and/or counties responsible for the operation, supervision, and maintenance of a jail.

~~((11))~~ (12) "Mandatory custodial care standards" means those minimum standards, rules, or regulations that are adopted pursuant to RCW 70.48.050(1)(a) and 70.48.070(1) for jails to meet federal and state constitutional requirements relating to the health, safety, security, and welfare of inmates.

~~((12))~~ (13) "Advisory custodial care standards" means custodial care standards recommended by the commission which are not mandatory.

~~((13))~~ (14) "Physical plant standards" and "physical plant requirements" mean those minimum standards, rules, or regulations that are prescribed by the commission for jails that relate to structural specifications of the physical plant, including but not limited to size of cells and rooms within a jail, design of facilities, and specifications for fixtures and other equipment.

~~((+4))~~ (15) "Jail inspector" means a person with at least five years in a supervisory position as a law enforcement or custodial corrections officer.

~~((+5))~~ (16) "Major urban" means a county or combination of counties which has a city having a population greater than twenty-six thousand based on the 1978 projections of the office of financial management.

~~((+6))~~ (17) "Medium urban" means a county or combination of counties which has a city having a population equal to or greater than ten thousand but less than twenty-six thousand based on the 1978 projections of the office of financial management.

~~((+7))~~ (18) "Rural" means a county or combination of counties which has a city having a population less than ten thousand based on the 1978 projections of the office of financial management.

NEW SECTION. Sec. 35. There is added to chapter 70.48 RCW a new section to read as follows:

Mandatory custodial care standards adopted under RCW 70.48.050 for special detention facilities shall be limited to those necessary to meet minimum legal requirements for health, welfare, and security for low-risk prisoners considering the length of stay and the prisoner classification involved. The standards shall not incorporate standards applicable to correction and detention facilities except where specifically justified.

NEW SECTION. Sec. 36. There is added to chapter 70.48 RCW a new section to read as follows:

The legislative authority of a county or city that establishes a special detention facility as defined in RCW 70.48.020 for persons convicted of violating RCW 46.61.502 or 46.61.504 may establish a reasonable fee schedule to cover the cost of housing in the facility. The schedule shall be on a sliding basis that reflects the person's ability to pay.

Sec. 37. Section 16, chapter 232, Laws of 1979 ex. sess. and RCW 70.48.180 are each amended to read as follows:

Counties may acquire, build, operate, and maintain holding, detention, special detention, and correctional facilities as defined in RCW 70.48.020 at any place designated by the county legislative authority within the territorial limits of the county. The facilities shall comply with chapter 70.48 RCW and the rules adopted thereunder.

Sec. 38. Section 35.21.330, chapter 7, Laws of 1965 as amended by section 19, chapter 316, Laws of 1977 ex. sess. and RCW 70.48.190 are each amended to read as follows:

Cities and towns may acquire, build, operate, and maintain holding, detention, special detention, and correctional facilities as defined in RCW 70.48.020 at any place within the territorial limits of the county in which the city or town is situated, as may be selected by the legislative authority of the municipality(~~(- PROVIDED, That such)~~). The facilities comply with

the provisions of chapter 70.48 RCW and rules adopted (~~thereto~~) thereunder.

Sec. 39. Section 17, chapter 232, Laws of 1979 ex. sess. and RCW 70.48.210 are each amended to read as follows:

(1) All cities and counties are authorized to establish and maintain farms, camps, and work release programs and facilities, as well as special detention facilities. The facilities shall meet the requirements of chapter 70.48 RCW and any rules adopted thereunder.

(2) Farms and camps may be established either inside or outside the territorial limits of a city or county. A sentence of confinement in a city or county jail may include placement in a farm or camp. Unless directed otherwise by court order, the chief law enforcement officer or department of corrections, may transfer the prisoner to a farm or camp. The sentencing court, chief law enforcement officer, or department of corrections may not transfer to a farm or camp a greater number of prisoners than can be furnished with constructive employment and can be reasonably accommodated.

(3) The city or county may establish a city or county work release program and housing facilities for the prisoners in the program. In such regard, factors such as employment conditions and the condition of jail facilities should be considered. When a work release program is established the following provisions apply:

(a) A person convicted of a felony and placed in a city or county jail is eligible for the work release program. A person sentenced to a city or county jail is eligible for the work release program. The program may be used as a condition of probation for a criminal offense. Good conduct is a condition of participation in the program.

(b) The court may permit a person who is currently, regularly employed to continue his or her employment. The chief law enforcement officer or department of corrections shall make all necessary arrangements if possible. The court may authorize the person to seek suitable employment and may authorize the chief law enforcement officer or department of corrections to make reasonable efforts to find suitable employment for the person. A person participating in the work release program may not work in an establishment where there is a labor dispute.

(c) The work release prisoner shall be confined in a work release facility or jail whenever the prisoner is not employed and between the hours or periods of employment unless the court directs otherwise.

(d) The chief law enforcement officer or (~~his~~) a designee shall collect the work release prisoner's earnings and from the earnings make payments for the prisoner's board, personal expenses inside and outside the jail, and share of the administrative expenses of this section. Support payments for the prisoner's dependents, if any, shall be made as directed by the court. With the prisoner's consent, the remaining funds may be used to pay the

prisoner's preexisting debts. Any balance shall be retained and paid to the prisoner when the prisoner is discharged.

(e) With court approval the prisoner's sentence may be reduced by one-fourth if the prisoner's conduct, diligence, and general attitude merit the reduction.

(f) If the work release prisoner violates the conditions of custody or employment, the prisoner shall be returned to the sentencing court. The sentencing court may require the prisoner to spend the remainder of the sentence in actual confinement and may cancel any earned reduction of the sentence.

(4) A special detention facility may be operated by a noncorrectional agency or by noncorrectional personnel by contract with the governing unit. The employees shall meet the standards of training and education established by the criminal justice training commission as authorized by RCW 43.101.080. The special detention facility may use combinations of features including, but not limited to, low-security or honor prisoner status, work farm, work release, community review, prisoner facility maintenance and food preparation, training programs, or alcohol or drug rehabilitation programs, with or without cost to the prisoners.

NEW SECTION. Sec. 40. There is added to chapter 35.21 RCW a new section to read as follows:

Except as limited by the maximum penalties authorized by law, no city or town may establish a penalty for an act that constitutes the crime of driving while under the influence of intoxicating liquor or any drug, as provided in RCW 46.61.502, or the crime of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, as provided in RCW 46.61.504, that is less than the penalties prescribed for those crimes in RCW 46.61.515.

NEW SECTION. Sec. 41. There is added to chapter 36.32 RCW a new section to read as follows:

No county may establish a penalty for an act that constitutes the crime of driving while under the influence of intoxicating liquor or any drug, as provided in RCW 46.61.502, or the crime of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, as provided in RCW 46.61.504, that is less than the penalties prescribed for those crimes in RCW 46.61.515.

NEW SECTION. Sec. 42. There is added to chapter 43.59 RCW a new section to read as follows:

The Washington traffic safety commission shall produce and disseminate through all possible media, informational and educational materials explaining the extent of the problems caused by drinking drivers, the need for public involvement in their solution, and the penalties of existing and new laws against driving while intoxicated.

NEW SECTION. Sec. 43. The standing committees on transportation and judiciary of the state senate and house of representatives, with the assistance of the department of licensing, shall conduct a joint study to analyze and evaluate the issues involved in authorizing administrative revocation of the driver's license of a person who operates a motor vehicle while under the influence of alcohol. The study shall include an analysis and evaluation of other states that have enacted statutes that provide for administrative revocation of driver's licenses, the effects on reducing drunken driving, the cost of implementing and administering such a program, and any impacts on the criminal justice system.

The committees shall submit a report that includes their findings and recommendations, together with proposed legislation, to the legislature before January 1, 1984.

NEW SECTION. Sec. 44. The legislature finds that previous attempts to curtail the incidence of driving while intoxicated have been inadequate. The legislature further finds that property loss, injury, and death caused by drinking drivers have reached unacceptable levels. This act is intended to convey the seriousness with which the legislature views this problem. To that end the legislature seeks to insure swift and certain punishment for those who drink and drive. The legislature does not intend to discourage or deter courts and other agencies from directing or providing treatment for problem drinkers. However, it is the intent that such treatment, where appropriate, be in addition to and not in lieu of the sanctions to be applied to all those convicted of driving while intoxicated.

Sec. 45. Section 12, chapter 244, Laws of 1975 1st ex. sess. and RCW 10.05.120 are each amended to read as follows:

~~((Two))~~ Five years from the date of the court's approval of deferred prosecution for an individual defendant, those dockets that remain in the special court deferred prosecution file relating to such defendant shall be dismissed and the records removed.

NEW SECTION. Sec. 46. Sections 3 through 12 of this act are added to chapter 46.20 RCW.

NEW SECTION. Sec. 47. Sections 2, 3 through 12, 14, 16, 18, 22, 24, and 26 of this act shall take effect on January 1, 1985. The remainder of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1983. The director of licensing may immediately take such steps as are necessary to insure that all sections of this act are implemented on their respective effective dates.

NEW SECTION. Sec. 48. If any provision of this 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.

Passed the House April 24, 1983.

Passed the Senate April 23, 1983.

Approved by the Governor May 11, 1983.

Filed in Office of Secretary of State May 11, 1983.

CHAPTER 166

[Senate Bill No. 3492]

NONRESIDENT TUITION AND FEES—HIGHER EDUCATION RECIPROCITY

AN ACT Relating to higher education; adding new sections to chapter 223, Laws of 1969 ex. sess. and to chapter 28B.15 RCW; and providing an expiration date.

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

NEW SECTION. Sec. 1. There is added to chapter 223, Laws of 1969 ex. sess. and to chapter 28B.15 RCW a new section to read as follows:

The state board for community college education and the boards of trustees of the state's community colleges, The Evergreen State College, and the regional universities and boards of regents of the University of Washington and Washington State University shall waive the payment of nonresident tuition and fees by residents of Idaho, upon completion of and to the extent permitted by an agreement between the council for postsecondary education and appropriate officials and agencies in Idaho granting similar waivers for residents of the state of Washington.

NEW SECTION. Sec. 2. There is added to chapter 223, Laws of 1969 ex. sess. and to chapter 28B.15 RCW a new section to read as follows:

Prior to January 1 of each odd-numbered year, the council for postsecondary education, in cooperation with the state board for community college education and in consultation with appropriate agencies and officials in the state of Idaho, shall determine for the purposes of section 1 of this act the number of students for whom nonresident tuition and fees have been waived for the first academic year of the biennium and the fall term of the second academic year, and make an estimate of the number of such students for the remainder of the second academic year, and the difference between the aggregate amount of tuition and fees that would have been paid to the respective states by residents of the other state had such waivers not been made, and the aggregate amount of tuition and fees paid by residents of the other state. Should the council determine that the state of Idaho has experienced a greater net tuition and fee revenue loss than institutions in Washington, it shall pay from funds appropriated for this purpose to the appropriate agency or institution in Idaho an amount determined by subtracting the net tuition and fee revenue loss of Washington from the net tuition and fee revenue loss of Idaho, minus twenty-five thousand dollars for