

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

Sec. 1. Section 1, chapter 35, Laws of 1975 1st ex. sess. and RCW 4.24.290 are each amended to read as follows:

In any civil action for damages based on professional negligence against a hospital which is licensed by the state of Washington or against the personnel of any such hospital, or against a member of the healing arts including, but not limited to, a physician licensed under chapter 18.71 RCW, an osteopathic physician licensed under chapter 18.57 RCW, a chiropractor licensed under chapter 18.25 RCW, a dentist licensed under chapter 18.32 RCW, a podiatrist licensed under chapter 18.22 RCW, or a nurse licensed under chapters 18.78 or 18.88 RCW, the plaintiff in order to prevail shall be required to prove by a preponderance of the evidence that the defendant or defendants failed to exercise that degree of skill, care, and learning possessed at that time by other persons in the same profession, and that as a proximate result of such failure the plaintiff suffered damages, but in no event shall the provisions of this section apply to an action based on the failure to obtain the informed consent of a patient.

Sec. 2. Section 9, chapter 56, Laws of 1975-'76 2nd ex. sess. and RCW 7.70.040 are each amended to read as follows:

The following shall be necessary elements of proof that injury resulted from the failure of the health care provider to follow the accepted standard of care:

- (1) The health care provider failed to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he belongs, in the state of Washington, acting in the same or similar circumstances;
- (2) Such failure was a proximate cause of the injury complained of.

Passed the House March 31, 1983.

Passed the Senate April 16, 1983.

Approved by the Governor April 23, 1983.

Filed in Office of Secretary of State April 23, 1983.

CHAPTER 150

[Substitute House Bill No. 498]

DRIVING WHILE INTOXICATED—ALCOHOL INFORMATION SCHOOL

AN ACT Relating to driving while intoxicated; amending section 62, chapter 155, Laws of 1965 ex. sess. as last amended by section 27, chapter 47, Laws of 1982 1st ex. sess. and RCW 46.61.515; creating a new section; and prescribing penalties.

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

Sec. 1. Section 62, chapter 155, Laws of 1965 ex. sess. as last amended by section 27, chapter 47, Laws of 1982 1st ex. sess. 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 hundred dollars. ~~((The person shall, in addition, be required to complete a course at an alcohol information school approved by the department of social and health services. If, after completing an alcohol evaluation at the alcohol information school, the convicted person is found to have a serious alcohol problem, the alcohol information school may recommend more intensive alcoholism treatment in a program approved by the department of social and health services. In the alternative, the court may bypass alcohol information school if the court determines that more intensive alcoholism treatment in a program approved by the department of social and health services is appropriate. Standards for approval 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.))~~ 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 not more than one thousand dollars. 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 ~~((such person)),~~ 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 ~~((at))~~ by an alcoholism ((program)) agency approved by the department of social and health services or ((other diagnostic evaluation as the court designates)) 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 ~~((PROVIDED; That))~~. All funds derived from ((such)) the penalty assessment ((shall be)) are in addition to and exclusive of assessments made under RCW 46.81.030 and ((shall be)) 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. ((Such)) 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 ~~((such))~~ 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 ~~((such))~~ offense, be suspended by the department for not less than thirty days: PROVIDED, That the court may recommend that no suspension action be taken. ~~((The treatment agency shall forward a copy of the completed diagnostic evaluation and treatment report to the department of licensing before the department may reinstate the person's driver's license.))~~ The department of licensing shall determine the person's eligibility for licensing based upon ~~((these))~~ 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 ~~((such))~~ offense within a five-year period, be suspended by the department for not less than sixty days. ~~((The treatment agency shall forward a copy of the completed diagnostic evaluation and treatment report to the department of licensing before the department may reinstate the person's driver's license.))~~ The department of licensing shall determine the person's eligibility for licensing based upon ~~((these))~~ the reports ~~((as))~~ provided ~~((in RCW 46.20.031))~~ 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 within a five-year period, be revoked by the department.

(6) In any case provided for in this section, where a driver's license is to be revoked or suspended, ~~((such))~~ 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 ~~((such))~~ the conviction is sustained on appeal ~~((such))~~ the revocation or suspension ~~((shall))~~ takes effect as of the date that the conviction becomes effective for other purposes.

NEW SECTION. Sec. 2. A qualified probation department means a probation department for a district or municipal court that has a sufficient number of qualified alcohol assessment officers who meet the requirements of a qualified alcoholism counselor as provided by rule of the department of

social and health services, except that the required hours of supervised work experience in an alcoholism agency may be satisfied by completing an equivalent number of hours of supervised work doing alcohol assessments within a probation department.

Passed the House March 30, 1983.

Passed the Senate April 17, 1983.

Approved by the Governor April 23, 1983.

Filed in Office of Secretary of State April 23, 1983.

CHAPTER 151

[Substitute House Bill No. 540]

PUBLIC TRANSPORTATION BENEFIT AREA—TREASURER

AN ACT Relating to public transportation benefit areas; and amending section 23, chapter 270, Laws of 1975 1st ex. sess. and RCW 36.57A.130.

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

Sec. 1. Section 23, chapter 270, Laws of 1975 1st ex. sess. and RCW 36.57A.130 are each amended to read as follows:

~~((Each public transportation benefit area authority shall establish a fund to be designated as the "transportation fund", in which shall be placed all sums received by the authority from any source except the proceeds of bonds issued by the authority, and out of which shall be expended all sums disbursed by the authority unless otherwise provided in bond covenants. The county treasurer, or in the case of a multi-county public transportation benefit area, the county treasurer of the largest component county, shall be the custodian of the fund. The county auditor of such county shall keep the record of the receipts and disbursements, and shall draw and such county treasurer shall honor and pay all warrants, which shall be approved before issuance and payment as directed by the authority.))~~ The treasurer of the county in which a public transportation benefit area authority is located shall be ex officio treasurer of the authority. In the case of a multicounty public transportation benefit area the county treasurer of the largest component county, by population, shall be the treasurer of the authority. However, the authority, by resolution, and upon the approval of the county treasurer, may designate some other person having experience in financial or fiscal matters as treasurer of the authority. Such a treasurer shall possess all of the powers, responsibilities, and duties the county treasurer possesses for a public transportation benefit area authority related to investing surplus authority funds. The authority may (and if the treasurer is not a county treasurer, it shall) require a bond with a surety company authorized to do business in the state of Washington in an amount and under the terms and conditions the authority, by resolution, from time to time finds will protect