

under subsection (5) of this section shall transmit to the director of licensing and the state auditor a written report showing by source the previous year's budgeted tax revenues for public transportation purposes as compared to actual collections. Any municipality that has not submitted the report by April 1 shall cease to be eligible to receive motor vehicle excise taxes under subsection (5) of this section until the report is received by the director of licensing. If a municipality has received more or less money under subsection (5) of this section for the period covered by the report than it is entitled to receive by reason of its locally-generated collected tax revenues, the director of licensing shall, during the next ensuing quarter that the municipality is eligible to receive motor vehicle excise tax funds, increase or decrease the amount to be remitted in an amount equal to the difference between the locally-generated budgeted tax revenues and the locally-generated collected tax revenues. In no event may the amount remitted for a calendar year exceed the amount collected on behalf of the municipality under RCW 35.58.273 during that same calendar year. At the time of the next fiscal audit of each municipality, the state auditor shall verify the accuracy of the report submitted and notify the director of licensing of any discrepancies.

(7) The motor vehicle excise taxes imposed under RCW 35.58.273 and required to be remitted under this section shall be remitted without legislative appropriation.

(8) Any municipality levying and collecting a tax under RCW 35.58.273 which does not have an operating, public transit system or a contract for public transportation services in effect within one year from the initial effective date of the tax shall return to the state treasurer all motor vehicle excise taxes received under subsection (5) of this section.

NEW SECTION. Sec. 5. Sections 1 through 3 of this act are 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 immediately.

NEW SECTION. Sec. 6. Section 4 of this act shall take effect on January 1, 1980.

Passed the House May 1, 1979.

Passed the Senate April 24, 1979.

Approved by the Governor May 14, 1979.

Filed in Office of Secretary of State May 14, 1979.

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## CHAPTER 176

[Substitute House Bill No. 665]

MOTOR VEHICLE OFFENSES INVOLVING ALCOHOL OR DRUGS—  
PENALTIES—APPROPRIATION

AN ACT Relating to motor vehicle offenses involving alcohol or drugs; amending section 1, chapter 1, Laws of 1969 as last amended by section 151, chapter 158, Laws of 1979 and RCW 46.20.308; amending section 46.52.100, chapter 12, Laws of 1961 as last amended by section 163, chapter 158, Laws of 1979 and RCW 46.52.100; amending section 3, chapter 1, Laws of 1969 as amended by section 1, chapter 287, Laws of 1975 1st ex. sess. and RCW 46.61.506; amending section 62, chapter 155, Laws of 1965 ex. sess. as last amended by section 3, chapter 3, Laws of 1977 ex. sess. and RCW 46.61.515; amending section 5, chapter 122, Laws of 1972 ex. sess. and RCW 70.96A.050; adding new sections to chapter 46.61 RCW; defining crimes; prescribing penalties; and making an appropriation.

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

NEW SECTION. Section 1. There is added to chapter 46.61 RCW a new section to read as follows:

A person is guilty of driving while under the influence of intoxicating liquor or any drug if he drives a vehicle within this state while:

(1) He has 0.10 percent or more by weight of alcohol in his blood as shown by chemical analysis of his breath, blood, or other bodily substance made under RCW 46.61.506 as now or hereafter amended; or

(2) He is under the influence of or affected by intoxicating liquor or any drug; or

(3) He is under the combined influence of or affected by intoxicating liquor and any drug.

The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section.

NEW SECTION. Sec. 2. There is added to chapter 46.61 RCW a new section to read as follows:

A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if he has actual physical control of a vehicle within this state while:

(1) He has a 0.10 percent or more by weight of alcohol in his blood as shown by chemical analysis of his breath, blood, or other bodily substance made under RCW 46.61.506, as now or hereafter amended; or

(2) He is under the influence of or affected by intoxicating liquor or any drug; or

(3) He is under the combined influence of or affected by intoxicating liquor and any drug.

The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section. No person may be convicted under this section if, prior to being pursued by a law enforcement officer, he has moved the vehicle safely off the roadway.

Sec. 3. Section 1, chapter 1, Laws of 1969 as last amended by section 151, chapter 158, Laws of 1979 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 deemed to have given consent, subject to the provisions of RCW 46.61.506, to a chemical test or tests of his breath or blood for the purpose of determining the alcoholic content of his blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor. The test or tests shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor. Such officer shall inform the person of his right to refuse the test, and of his right to have additional tests administered by any qualified person of his choosing as provided in RCW 46.61.506. The officer shall warn the driver that his privilege to drive will be revoked or denied if he refuses to submit to the test. Unless the person to be tested is unconscious, the chemical test administered shall be of his breath only: PROVIDED, That if an individual is under arrest for the crime of negligent homicide by motor vehicle as provided in RCW 46.61.520, 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 46.61.506)) section 1 of this 1979 act, 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 arrest, the person arrested refuses upon the request of a law enforcement officer to submit to a chemical test of his breath, after being informed that his refusal will result in the revocation or denial of his privilege to drive, no test shall be given. The department of 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 after the date of the alleged violation, 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 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 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 hearing for the purposes of this section shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor, whether the person was placed under arrest and whether he refused to submit to the test upon request of the officer after having been informed that such refusal would result in the revocation or denial of his privilege to drive. The department shall order that the revocation or determination that there should be a denial of issuance either be rescinded or sustained. Any decision by the department revoking a person's driving privilege shall be stayed and shall not take effect while a formal hearing is pending as herein provided or during the pendency of a subsequent appeal to superior court: PROVIDED, That this stay shall be effective only so long as there is no conviction for a moving violation during pendency of the hearing and appeal.

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

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

Sec. 4. Section 46.52.100, chapter 12, Laws of 1961 as last amended by section 163, chapter 158, Laws of 1979 and RCW 46.52.100 are each amended to read as follows:

Every justice of the peace, police judge and clerk of superior court shall keep or cause to be kept a record of every traffic complaint, traffic citation or other legal form of traffic charge deposited with or presented to said justice of the peace, police judge, superior court or a traffic violations bureau, and shall keep a record of every official action by said court or its traffic violations bureau in reference thereto, including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal and the amount of fine or forfeiture resulting from every said traffic complaint or citation deposited with or presented to the justice of the peace, police judge, superior court or traffic violations bureau.

The Monday following the conviction or forfeiture of bail of a person upon a charge of violating any provisions of this chapter or other law regulating the operating of vehicles on highways, every said magistrate of the court or clerk of the court of record in which such conviction was had or bail was forfeited shall prepare and immediately forward to the director of licensing at Olympia an abstract of the record of said court covering the case in which said person was so convicted or forfeited bail, which abstract must be certified by the person so required to prepare the same to be true and correct. Report need not be made of any conviction involving the illegal parking or standing of a vehicle.

Said abstract must be made upon a form furnished by the director and shall include the name and address of the party charged, the number, if any, of his driver's or chauffeur's license, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, or whether bail forfeited and the amount of the fine or forfeiture as the case may be.

Every court of record shall also forward a like report to the director upon the conviction of any person of manslaughter or other felony in the commission of which a vehicle was used.

The failure of any such judicial officer to comply with any of the requirements of this section shall constitute misconduct in office and shall be grounds for removal therefrom.

The director shall keep all abstracts received hereunder at his office in Olympia and the same shall be open to public inspection during reasonable business hours.

Venue in all justice courts shall be before one of the two nearest justices of the peace in incorporated cities and towns nearest to the point the violation allegedly occurred: PROVIDED, That in counties of class A and of the first class such cases may be tried in the county seat at the request of the defendant.

It shall be the duty of the officer, prosecuting attorney or city attorney signing the charge or information in any case involving a charge of driving

under the influence of intoxicating liquor or any (~~narcotic~~) drug immediately to make request to the director for an abstract of convictions and forfeitures which the director shall furnish.

~~((If a driver has a record of two or more convictions or forfeitures of the offense of operating a vehicle under the influence of or affected by the use of intoxicating liquor or any narcotic drug within a five year period, he shall, upon conviction, be fined not less than one hundred dollars and not more than one thousand dollars, and shall be sentenced to not less than thirty days and not more than one year in the county jail and neither fine nor sentence shall be suspended; and the court shall revoke the driver's license.))~~

If the driver at the time of the offense charged was without a driver's license because of a previous suspension or revocation, the minimum mandatory jail sentence and fine shall be ninety days in the county jail and a two hundred dollar fine. The penalty so imposed shall not be suspended.

Sec. 5. Section 3, chapter 1, Laws of 1969 as amended by section 1, chapter 287, Laws of 1975 1st ex. sess. and RCW 46.61.506 are each amended to read as follows:

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

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

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

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

(2) Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per one hundred cubic centimeters of blood. ~~((c))~~ The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question

whether the person was under the influence of intoxicating liquor or any drug.

(3) Chemical analysis of the person's blood or breath to be considered valid under the provisions of this section or section 1 or 2 of this 1979 act shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist is directed to approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the state toxicologist.

(4) When a blood test is administered under the provisions of RCW 46.20.308, the withdrawal of blood for the purpose of determining its alcoholic content may be performed only by a physician, a registered nurse, or a qualified technician. This limitation shall not apply to the taking of breath specimens.

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

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

Sec. 6. Section 62, chapter 155, Laws of 1965 ex. sess. as last amended by section 3, chapter 3, Laws of 1977 ex. sess. and RCW 46.61.515 are each amended to read as follows:

(1) Every person who is convicted of a violation of (~~((a) driving a motor vehicle while under the influence of intoxicating liquor or (b) driving a motor vehicle while under the influence of a drug to a degree which renders the driver incapable of safely driving a motor vehicle))~~ section 1 or 2 of this 1979 act shall be punished by imprisonment for not less than (~~(five)~~) one day(s) nor more than one year, and by a fine of not (~~(less than fifty dollars nor)~~) 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. One day 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.

(2) On a second or subsequent conviction ((of either offense)) under section 1 or 2 of this 1979 act within a five year period ((he)) a person shall

be punished by imprisonment for not less than ~~((thirty))~~ seven days nor more than one year and by a fine not ~~((less than one hundred dollars nor))~~ more than one thousand dollars~~((, and neither))~~. The jail sentence ((nor the fine)) shall not be suspended~~((: PROVIDED, That the court may, for a defendant who has not previously had a jail sentence suspended on such second or subsequent conviction, suspend such sentence and/or fine only on the condition that the defendant participate in and successfully complete a court approved alcohol treatment program: PROVIDED, FURTHER, That the suspension shall be set aside upon the failure of the defendant to provide proof of successful completion of said treatment program within a time certain to be established by the court))~~ 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 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.

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.

~~((2))~~ (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 penalty assessment shall be in addition to and exclusive of assessments made under RCW 46.81.030 and shall be 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 penalty assessment shall be included in any bail schedule and shall be included by the court in any pronouncement of sentence.

~~((3))~~ (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 ~~((2))~~ (3) of this section shall not be suspended, waived, modified, or deferred in any respect, and all moneys derived from such penalty assessments shall be forwarded to the highway safety fund to be used exclusively for the purposes set forth in subsection ~~((2))~~ (3) of this section.

~~((4))~~ (5) The license or permit to drive or any nonresident privilege of any person convicted of either of the offenses named in ~~((subsection (1) above))~~ section 1 or 2 of this 1979 act 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;

(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 ~~((after the termination of such person's jail sentence))~~;

(c) On a third or subsequent conviction under either such offense within a five year period, be revoked by the department.

~~((5))~~ (6) In any case provided for in this section, where a driver's license is to be revoked or suspended, such 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 conviction is sustained on appeal such revocation or suspension shall take effect as of the date that the conviction becomes effective for other purposes.

(7) The provisions of this section limiting the authority of a court to defer or suspend a sentence shall not take effect until January 1, 1980. The division of criminal justice, no later than December 31, 1980, shall submit a study to the house of representatives and to the senate which details the impact of the sentencing provisions established by this section. The impact study shall include, but shall not be limited to, the following information: The impact of the provisions upon county jail conditions and bed space, the cost impact of the provisions upon local and state governments, and the existence of alternative facilities to which individuals sentenced under this section may be committed.

Sec. 7. Section 5, chapter 122, Laws of 1972 ex. sess. and RCW 70-.96A.050 are each amended to read as follows:

The department shall:

(1) Develop, encourage, and foster state-wide, regional, and local plans and programs for the prevention of alcoholism and treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes;

(2) Coordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in prevention of alcoholism and treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons;

(3) Cooperate with public and private agencies in establishing and conducting programs to provide treatment for alcoholics, persons incapacitated by alcohol, and intoxicated persons who are clients of the correctional system.

(4) Cooperate with the superintendent of public instruction, state board of education, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons, and preparing curriculum materials thereon for use at all levels of school education;

(5) Prepare, publish, evaluate, and disseminate educational material dealing with the nature and effects of alcohol;

(6) Develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol;

(7) Organize and foster training programs for persons engaged in treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons;

(8) Sponsor and encourage research into the causes and nature of alcoholism and treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons, and serve as a clearing house for information relating to alcoholism;

(9) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment;

(10) Advise the governor in the preparation of a comprehensive plan for treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons for inclusion in the state's comprehensive health plan;

(11) Review all state health, welfare, and treatment plans to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to alcoholism, persons incapacitated by alcohol, and intoxicated persons;

(12) Assist in the development of, and cooperate with, alcohol education and treatment programs for employees of state and local governments and businesses and industries in the state;

(13) Utilize the support and assistance of interested persons in the community to encourage alcoholics voluntarily to undergo treatment;

(14) Cooperate with public and private agencies in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated;

(15) Encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics, persons incapacitated by alcohol, and intoxicated persons and to provide them with adequate and appropriate treatment; ~~((and))~~

(16) Encourage all health and disability insurance programs to include alcoholism as a covered illness; and

(17) Organize and sponsor a state-wide program to help court personnel, including judges, better understand the disease of alcoholism and the uses of alcoholism treatment programs.

NEW SECTION. Sec. 8. 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.

NEW SECTION. Sec. 9. There is hereby appropriated ten thousand dollars to the department of social and health services to study the problem of abuse of alcohol by drivers and to report to the legislature in 1981.

Passed the House April 27, 1979.

Passed the Senate April 25, 1979.

Approved by the Governor May 14, 1979.

Filed in Office of Secretary of State May 14, 1979.

## CHAPTER 177

[House Bill No. 668]

### EMPLOYMENT SECURITY DEPARTMENT—RECORDS ACCESS— EMPLOYEES' INVENTIONS, PROTECTION OF RIGHTS

AN ACT Relating to the employment security department records; and amending section 6, chapter 153, Laws of 1977 ex. sess. and RCW 50.13.060; and adding new sections to chapter 49.44 RCW.

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

Section 1. Section 6, chapter 153, Laws of 1977 ex. sess. and RCW 50.13.060 are each amended to read as follows:

(1) Governmental agencies, including law enforcement agencies, prosecuting agencies, and the executive branch, whether state, local, or federal shall have access to information or records deemed private and confidential under this chapter if the information or records are needed by the agency for official purposes and:

(a) The agency submits an application in writing to the employment security department for the records or information containing a statement of the official purposes for which the information or records are needed and specific identification of the records or information sought from the department; and