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**SUBSTITUTE SENATE BILL 5066**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By Senate Law & Justice** (originally sponsored by Senators Padden and Darneille)

1       AN ACT Relating to the collection of blood samples for forensic  
2 testing; amending RCW 46.61.506 and 46.61.508; adding a new section  
3 to chapter 18.130 RCW; adding a new section to chapter 43.70 RCW; and  
4 adding a new section to chapter 46.04 RCW.

5       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6       NEW SECTION.   **Sec. 1.**   A new section is added to chapter 18.130  
7 RCW to read as follows:

8       It is not professional misconduct for a physician, registered  
9 nurse, licensed practical nurse, nursing assistant as defined in  
10 chapter 18.88A RCW, physician assistant as defined in chapter 18.71A  
11 RCW, first responder as defined in chapter 18.73 RCW, emergency  
12 medical technician as defined in chapter 18.73 RCW, health care  
13 assistant as defined in chapter 18.135 RCW, or any technician trained  
14 in withdrawing blood, to collect a blood sample without a person's  
15 consent when the physician, registered nurse, licensed practical  
16 nurse, nursing assistant as defined in chapter 18.88A RCW, physician  
17 assistant as defined in chapter 18.71A RCW, first responder as  
18 defined in chapter 18.73 RCW, emergency medical technician as defined  
19 in chapter 18.73 RCW, health care assistant as defined in chapter  
20 18.135 RCW, or any technician trained in withdrawing blood was  
21 directed by a law enforcement officer to do so for the purpose of a

1 blood test under the provisions of a search warrant or exigent  
2 circumstances: PROVIDED, That nothing in this section shall relieve a  
3 physician, registered nurse, licensed practical nurse, nursing  
4 assistant as defined in chapter 18.88A RCW, physician assistant as  
5 defined in chapter 18.71A RCW, first responder as defined in chapter  
6 18.73 RCW, emergency medical technician as defined in chapter 18.73  
7 RCW, health care assistant as defined in chapter 18.135 RCW, a  
8 forensic phlebotomist under section 3 of this act, or any technician  
9 trained in withdrawing blood from professional discipline arising  
10 from the use of improper procedures or from failing to exercise the  
11 required standard of care.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.70  
13 RCW to read as follows:

14 (1) The secretary, in consultation with health profession boards  
15 and commissions, the Washington state criminal justice training  
16 commission, and the Washington state patrol, shall establish by rule  
17 the administrative procedures and administrative requirements for  
18 initial issue, renewal, and reissue of a credential for forensic  
19 phlebotomists as defined in section 3 of this act. Failure to renew  
20 invalidates the credential and all privileges granted by the  
21 credential. Administrative procedures and administrative requirements  
22 do not include establishing, monitoring, and enforcing qualifications  
23 for licensure, scope or standards of practice, continuing competency  
24 mechanisms, and discipline when such authority is authorized in  
25 statute to a health profession board or commission or to the criminal  
26 justice training commission. For the purposes of this section, "in  
27 consultation with" means providing an opportunity for meaningful  
28 participation in development of rules consistent with processes set  
29 forth in RCW 34.05.310.

30 (2) Notwithstanding any provision of law to the contrary that  
31 provides for a licensing period for any type of license subject to  
32 this chapter including those under RCW 18.130.040, the secretary may,  
33 from time to time, extend or otherwise modify the duration of any  
34 licensing, certification, or registration period, whether an initial  
35 or renewal period, if the secretary determines that it would result  
36 in a more economical or efficient operation of state government and  
37 that the public health, safety, or welfare would not be substantially  
38 adversely affected thereby. However, no license, certification, or  
39 registration may be issued or approved for a period in excess of four

1 years, without renewal. Such extension, reduction, or other  
2 modification of a licensing, certification, or registration period  
3 shall be by rule or regulation of the department adopted in  
4 accordance with the provisions of chapter 34.05 RCW. Such rules and  
5 regulations may provide a method for imposing and collecting such  
6 additional proportional fee as may be required for the extended or  
7 modified period.

8 NEW SECTION. **Sec. 3.** A new section is added to chapter 46.04  
9 RCW to read as follows:

10 "Forensic phlebotomist" means a police officer, law enforcement  
11 officer, or employee of a correctional facility or detention  
12 facility, who completed a venipuncture training program required  
13 under section 2 of this act and who is collecting a blood sample for  
14 forensic testing pursuant to a search warrant, a waiver of the  
15 warrant requirement, or exigent circumstances.

16 **Sec. 4.** RCW 46.61.506 and 2013 c 3 s 37 are each amended to read  
17 as follows:

18 (1) Upon the trial of any civil or criminal action or proceeding  
19 arising out of acts alleged to have been committed by any person  
20 while driving or in actual physical control of a vehicle while under  
21 the influence of intoxicating liquor or any drug, if the person's  
22 alcohol concentration is less than 0.08 or the person's THC  
23 concentration is less than 5.00, it is evidence that may be  
24 considered with other competent evidence in determining whether the  
25 person was under the influence of intoxicating liquor or any drug.

26 (2)(a) The breath analysis of the person's alcohol concentration  
27 shall be based upon grams of alcohol per two hundred ten liters of  
28 breath.

29 (b) The blood analysis of the person's THC concentration shall be  
30 based upon nanograms per milliliter of whole blood.

31 (c) The foregoing provisions of this section shall not be  
32 construed as limiting the introduction of any other competent  
33 evidence bearing upon the question whether the person was under the  
34 influence of intoxicating liquor or any drug.

35 (3) Analysis of the person's blood or breath to be considered  
36 valid under the provisions of this section or RCW 46.61.502 or  
37 46.61.504 shall have been performed according to methods approved by  
38 the state toxicologist and by an individual possessing a valid permit

1 issued by the state toxicologist for this purpose. The state  
2 toxicologist is directed to approve satisfactory techniques or  
3 methods, to supervise the examination of individuals to ascertain  
4 their qualifications and competence to conduct such analyses, and to  
5 issue permits which shall be subject to termination or revocation at  
6 the discretion of the state toxicologist.

7 (4)(a) A breath test performed by any instrument approved by the  
8 state toxicologist shall be admissible at trial or in an  
9 administrative proceeding if the prosecution or department produces  
10 prima facie evidence of the following:

11 (i) The person who performed the test was authorized to perform  
12 such test by the state toxicologist;

13 (ii) The person being tested did not vomit or have anything to  
14 eat, drink, or smoke for at least fifteen minutes prior to  
15 administration of the test;

16 (iii) The person being tested did not have any foreign  
17 substances, not to include dental work, fixed or removable, in his or  
18 her mouth at the beginning of the fifteen-minute observation period;

19 (iv) Prior to the start of the test, the temperature of any  
20 liquid simulator solution utilized as an external standard, as  
21 measured by a thermometer approved of by the state toxicologist was  
22 thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;

23 (v) The internal standard test resulted in the message  
24 "verified";

25 (vi) The two breath samples agree to within plus or minus ten  
26 percent of their mean to be determined by the method approved by the  
27 state toxicologist;

28 (vii) The result of the test of the liquid simulator solution  
29 external standard or dry gas external standard result did lie  
30 between .072 to .088 inclusive; and

31 (viii) All blank tests gave results of .000.

32 (b) For purposes of this section, "prima facie evidence" is  
33 evidence of sufficient circumstances that would support a logical and  
34 reasonable inference of the facts sought to be proved. In assessing  
35 whether there is sufficient evidence of the foundational facts, the  
36 court or administrative tribunal is to assume the truth of the  
37 prosecution's or department's evidence and all reasonable inferences  
38 from it in a light most favorable to the prosecution or department.

39 (c) Nothing in this section shall be deemed to prevent the  
40 subject of the test from challenging the reliability or accuracy of

1 the test, the reliability or functioning of the instrument, or any  
2 maintenance procedures. Such challenges, however, shall not preclude  
3 the admissibility of the test once the prosecution or department has  
4 made a prima facie showing of the requirements contained in (a) of  
5 this subsection. Instead, such challenges may be considered by the  
6 trier of fact in determining what weight to give to the test result.

7 (5) When a blood test is administered under the provisions of RCW  
8 46.20.308, or pursuant to a search warrant, exigent circumstances, or  
9 a waiver of the warrant requirement, the withdrawal of blood for the  
10 purpose of determining its alcoholic or drug content may be performed  
11 only by a physician, a registered nurse, a licensed practical nurse,  
12 a nursing assistant as defined in chapter 18.88A RCW, a physician  
13 assistant as defined in chapter 18.71A RCW, a first responder as  
14 defined in chapter 18.73 RCW, an emergency medical technician as  
15 defined in chapter 18.73 RCW, a health care assistant as defined in  
16 chapter 18.135 RCW, or any technician trained in withdrawing blood.  
17 This limitation shall not apply to the taking of breath specimens.

18 (6) The person tested may have a physician, or a qualified  
19 technician, chemist, registered nurse, or other qualified person of  
20 his or her own choosing administer one or more tests in addition to  
21 any administered at the direction of a law enforcement officer. The  
22 test will be admissible if the person establishes the general  
23 acceptability of the testing technique or method. The failure or  
24 inability to obtain an additional test by a person shall not preclude  
25 the admission of evidence relating to the test or tests taken at the  
26 direction of a law enforcement officer.

27 (7) Upon the request of the person who shall submit to a test or  
28 tests at the request of a law enforcement officer, full information  
29 concerning the test or tests shall be made available to him or her or  
30 his or her attorney.

31 **Sec. 5.** RCW 46.61.508 and 1977 ex.s. c 143 s 1 are each amended  
32 to read as follows:

33 No physician, registered nurse, (~~qualified technician~~) licensed  
34 practical nurse, nursing assistant as defined in chapter 18.88A RCW,  
35 physician assistant as defined in chapter 18.71A RCW, first responder  
36 as defined in chapter 18.73 RCW, emergency medical technician as  
37 defined in chapter 18.73 RCW, health care assistant as defined in  
38 chapter 18.135 RCW, forensic phlebotomist under section 3 of this  
39 act, or any technician trained in withdrawing blood, or hospital, or

1 duly licensed clinical laboratory employing or utilizing services of  
2 such physician, registered nurse, licensed practical nurse, nursing  
3 assistant, physician assistant, first responder, emergency medical  
4 technician, health care assistant, or qualified technician, shall  
5 incur any civil or criminal liability as a result of the act of  
6 withdrawing blood from any person when directed by a law enforcement  
7 officer to do so for the purpose of a blood test under the provisions  
8 of a search warrant, a waiver of the search warrant requirement,  
9 exigent circumstances, or RCW 46.20.308, as now or hereafter amended.  
10 Refusal by a physician, registered nurse, licensed practical nurse,  
11 nursing assistant as defined in chapter 18.88A RCW, physician  
12 assistant as defined in chapter 18.71A RCW, first responder as  
13 defined in chapter 18.73 RCW, emergency medical technician as defined  
14 in chapter 18.73 RCW, health care assistant as defined in chapter  
15 18.135 RCW, or any technician trained in withdrawing blood, or  
16 hospital, or duly licensed clinical laboratory employing or utilizing  
17 services of such physician, registered nurse, licensed practical  
18 nurse, nursing assistant, physician assistant, first responder,  
19 emergency medical technician, health care assistant, or qualified  
20 technician, to withdraw blood shall not constitute a refusal to obey  
21 a law enforcement officer, obstruction of a law enforcement  
22 investigation, or otherwise subject said person to criminal or civil  
23 liability: PROVIDED, That nothing in this section shall relieve any  
24 physician, registered nurse, licensed practical nurse, nursing  
25 assistant, physician assistant, first responder, emergency medical  
26 technician, health care assistant, forensic phlebotomist, qualified  
27 technician, or hospital or duly licensed clinical laboratory from  
28 civil liability arising from the use of improper procedures or  
29 failing to exercise the required standard of care.

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