

ESHB 1371 - S COMM AMD

By Committee on Transportation

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 46.61
4 RCW to read as follows:

5 (1) A person who uses a personal electronic device while driving
6 a motor vehicle on a public highway is guilty of a traffic infraction
7 and must pay a fine as provided in RCW 46.63.110(3).

8 (2) Subsection (1) of this section does not apply to:

9 (a) A driver who is using a personal electronic device to contact
10 emergency services;

11 (b) The use of a system by a transit system employee for time-
12 sensitive relay communication between the transit system employee and
13 the transit system's dispatch services;

14 (c) An individual employed as a commercial motor vehicle driver
15 who uses a personal electronic device within the scope of such
16 individual's employment if such use is permitted under 49 U.S.C. Sec.
17 31136 as it existed on the effective date of this section; and

18 (d) A person operating an authorized emergency vehicle.

19 (3) The state preempts the field of regulating the use of
20 personal electronic devices in motor vehicles while driving, and this
21 section supersedes any local laws, ordinances, orders, rules, or
22 regulations enacted by any political subdivision or municipality to
23 regulate the use of a personal electronic device by the operator of a
24 motor vehicle.

25 (4) A second or subsequent offense under this section is subject
26 to two times the penalty amount under RCW 46.63.110.

27 (5) For purposes of this section:

28 (a) "Driving" means to operate a motor vehicle on a public
29 highway, including while temporarily stationary because of traffic, a
30 traffic control device, or other momentary delays. "Driving" does not
31 include when the vehicle has pulled over to the side of, or off of,

1 an active roadway and has stopped in a location where it can safely
2 remain stationary.

3 (b) "Personal electronic device" means any portable electronic
4 device that is capable of wireless communication or electronic data
5 retrieval and is not manufactured primarily for hands-free use in a
6 motor vehicle. "Personal electronic device" includes, but is not
7 limited to, a cell phone, tablet, laptop, two-way messaging device,
8 or electronic game. "Personal electronic device" does not include
9 two-way radio, citizens band radio, or amateur radio equipment.

10 (c) "Use" or "uses" means:

11 (i) Holding a personal electronic device in either hand or both
12 hands;

13 (ii) Using your hand or finger to compose, send, read, view,
14 access, browse, transmit, save, or retrieve email, text messages,
15 instant messages, photographs, or other electronic data; however,
16 this does not preclude the minimal use of a finger to activate,
17 deactivate, or initiate a function of the device;

18 (iii) Watching video on a personal electronic device.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.61
20 RCW to read as follows:

21 (1)(a) It is a traffic infraction to drive dangerously
22 distracted. Any driver who commits this infraction must be assessed a
23 base penalty of thirty dollars.

24 (b) Enforcement of the infraction of driving dangerously
25 distracted may be accomplished only as a secondary action when a
26 driver of a motor vehicle has been detained for a suspected violation
27 of a separate traffic infraction or an equivalent local ordinance.

28 (c) For the purposes of this section, "dangerously distracted"
29 means a person who engages in any activity not related to the actual
30 operation of a motor vehicle in a manner that interferes with the
31 safe operation of such motor vehicle on any highway.

32 (2) The additional monetary penalty imposed under this section
33 must be deposited into the distracted driving prevention account
34 created in subsection (3) of this section.

35 (3) The distracted driving prevention account is created in the
36 state treasury. All receipts from the base penalty in subsection (1)
37 of this section must be deposited into the account. Moneys in the
38 account may be spent only after appropriation. Expenditures from the
39 account may be used only to support programs dedicated to reducing

1 distracted driving and improving driver education on distracted
2 driving.

3 **Sec. 3.** RCW 46.25.010 and 2013 c 224 s 3 are each amended to
4 read as follows:

5 The definitions set forth in this section apply throughout this
6 chapter.

7 (1) "Alcohol" means any substance containing any form of alcohol,
8 including but not limited to ethanol, methanol, propanol, and
9 isopropanol.

10 (2) "Alcohol concentration" means:

11 (a) The number of grams of alcohol per one hundred milliliters of
12 blood; or

13 (b) The number of grams of alcohol per two hundred ten liters of
14 breath.

15 (3) "Commercial driver's license" (CDL) means a license issued to
16 an individual under chapter 46.20 RCW that has been endorsed in
17 accordance with the requirements of this chapter to authorize the
18 individual to drive a class of commercial motor vehicle.

19 (4) The "commercial driver's license information system" (CDLIS)
20 is the information system established pursuant to 49 U.S.C. Sec.
21 31309 to serve as a clearinghouse for locating information related to
22 the licensing and identification of commercial motor vehicle drivers.

23 (5) "Commercial learner's permit" (CLP) means a permit issued
24 under RCW 46.25.052 for the purposes of behind-the-wheel training.

25 (6) "Commercial motor vehicle" means a motor vehicle or
26 combination of motor vehicles used in commerce to transport
27 passengers or property if the motor vehicle:

28 (a) Has a gross combination weight rating or gross combination
29 weight of 11,794 kilograms or more (26,001 pounds or more), whichever
30 is greater, inclusive of (~~a-[any]~~) any towed unit (~~([for units])~~) or
31 units with a gross vehicle weight rating or gross vehicle weight of
32 more than 4,536 kilograms (10,000 pounds or more), whichever is
33 greater; or

34 (b) Has a gross vehicle weight rating or gross vehicle weight of
35 11,794 kilograms or more (26,001 pounds or more), whichever is
36 greater; or

37 (c) Is designed to transport sixteen or more passengers,
38 including the driver; or

1 (d) Is of any size and is used in the transportation of hazardous
2 materials as defined in this section; or

3 (e) Is a school bus regardless of weight or size.

4 (7) "Conviction" means an unvacated adjudication of guilt, or a
5 determination that a person has violated or failed to comply with the
6 law in a court of original jurisdiction or by an authorized
7 administrative tribunal, an unvacated forfeiture of bail or
8 collateral deposited to secure the person's appearance in court, a
9 plea of guilty or nolo contendere accepted by the court, the payment
10 of a fine or court cost, entry into a deferred prosecution program
11 under chapter 10.05 RCW, or violation of a condition of release
12 without bail, regardless of whether or not the penalty is rebated,
13 suspended, or probated.

14 (8) "Disqualification" means a prohibition against driving a
15 commercial motor vehicle.

16 (9) "Drive" means to drive, operate, or be in physical control of
17 a motor vehicle in any place open to the general public for purposes
18 of vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and
19 46.25.120, "drive" includes operation or physical control of a motor
20 vehicle anywhere in the state.

21 (10) "Drugs" are those substances as defined by RCW 69.04.009,
22 including, but not limited to, those substances defined by 49 C.F.R.
23 Sec. 40.3.

24 (11) "Employer" means any person, including the United States, a
25 state, or a political subdivision of a state, who owns or leases a
26 commercial motor vehicle, or assigns a person to drive a commercial
27 motor vehicle.

28 (12) "Gross vehicle weight rating" (GVWR) means the value
29 specified by the manufacturer as the maximum loaded weight of a
30 single vehicle. The GVWR of a combination or articulated vehicle,
31 commonly referred to as the "gross combined weight rating" or GCWR,
32 is the GVWR of the power unit plus the GVWR of the towed unit or
33 units. If the GVWR of any unit cannot be determined, the actual gross
34 weight will be used. If a vehicle with a GVWR of less than 11,794
35 kilograms (26,001 pounds or less) has been structurally modified to
36 carry a heavier load, then the actual gross weight capacity of the
37 modified vehicle, as determined by RCW 46.44.041 and 46.44.042, will
38 be used as the GVWR.

39 (13) "Hazardous materials" means any material that has been
40 designated as hazardous under 49 U.S.C. Sec. 5103 and is required to

1 be placarded under subpart F of 49 C.F.R. Part 172 or any quantity of
2 a material listed as a select agent or toxin in 42 C.F.R. Part 73.

3 (14) "Motor vehicle" means a vehicle, machine, tractor, trailer,
4 or semitrailer propelled or drawn by mechanical power used on
5 highways, or any other vehicle required to be registered under the
6 laws of this state, but does not include a vehicle, machine, tractor,
7 trailer, or semitrailer operated exclusively on a rail.

8 (15) "Out-of-service order" means a declaration by an authorized
9 enforcement officer of a federal, state, Canadian, Mexican, or local
10 jurisdiction that a driver, a commercial motor vehicle, or a motor
11 carrier operation is out-of-service pursuant to 49 C.F.R. Secs.
12 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North
13 American uniform out-of-service criteria.

14 (16) "Positive alcohol confirmation test" means an alcohol
15 confirmation test that:

16 (a) Has been conducted by a breath alcohol technician under 49
17 C.F.R. Part 40; and

18 (b) Indicates an alcohol concentration of 0.04 or more.

19 A report that a person has refused an alcohol test, under
20 circumstances that constitute the refusal of an alcohol test under 49
21 C.F.R. Part 40, will be considered equivalent to a report of a
22 positive alcohol confirmation test for the purposes of this chapter.

23 (17) "School bus" means a commercial motor vehicle used to
24 transport preprimary, primary, or secondary school students from home
25 to school, from school to home, or to and from school-sponsored
26 events. School bus does not include a bus used as a common carrier.

27 (18) "Serious traffic violation" means:

28 (a) Excessive speeding, defined as fifteen miles per hour or more
29 in excess of the posted limit;

30 (b) Reckless driving, as defined under state or local law;

31 (c) Driving while using a (~~handheld wireless communications~~
32 ~~device [handheld mobile telephone], defined as a violation of RCW~~
33 46.61.667(1)(b)) personal electronic device, defined as a violation

34 of section 1 of this act, which includes in the activities it
35 prohibits driving while holding a personal electronic device in
36 either or both hands and using a hand or finger for texting, or an
37 equivalent administrative rule or local law, ordinance, rule, or
38 resolution;

1 (d) (~~Texting, defined as a violation of RCW 46.61.668(1)(b) or~~
2 ~~an equivalent administrative rule or local law, ordinance, rule, or~~
3 ~~resolution;~~

4 (e)) A violation of a state or local law relating to motor
5 vehicle traffic control, other than a parking violation, arising in
6 connection with an accident or collision resulting in death to any
7 person;

8 (~~(f))~~ (e) Driving a commercial motor vehicle without obtaining
9 a commercial driver's license;

10 (~~(g))~~ (f) Driving a commercial motor vehicle without a
11 commercial driver's license in the driver's possession; however, any
12 individual who provides proof to the court by the date the individual
13 must appear in court or pay any fine for such a violation, that the
14 individual held a valid CDL on the date the citation was issued, is
15 not guilty of a "serious traffic violation";

16 (~~(h))~~ (g) Driving a commercial motor vehicle without the proper
17 class of commercial driver's license endorsement or endorsements for
18 the specific vehicle group being operated or for the passenger or
19 type of cargo being transported; and

20 (~~(i))~~ (h) Any other violation of a state or local law relating
21 to motor vehicle traffic control, other than a parking violation,
22 that the department determines by rule to be serious.

23 (19) "State" means a state of the United States and the District
24 of Columbia.

25 (20) "Substance abuse professional" means an alcohol and drug
26 specialist meeting the credentials, knowledge, training, and
27 continuing education requirements of 49 C.F.R. Sec. 40.281.

28 (21) "Tank vehicle" means any commercial motor vehicle that is
29 designed to transport any liquid or gaseous materials within a tank
30 or tanks having an individual rated capacity of more than one hundred
31 nineteen gallons and an aggregate rated capacity of one thousand
32 gallons or more that is either permanently or temporarily attached to
33 the vehicle or the chassis. A commercial motor vehicle transporting
34 an empty storage container tank, not designed for transportation,
35 with a rated capacity of one thousand gallons or more that is
36 temporarily attached to a flatbed trailer is not considered a tank
37 vehicle.

38 (22) "Type of driving" means one of the following:

39 (a) "Nonexcepted interstate," which means the CDL or CLP holder
40 or applicant operates or expects to operate in interstate commerce,

1 is both subject to and meets the qualification requirements under 49
2 C.F.R. Part 391 as it existed on July 8, 2014, or such subsequent
3 date as may be provided by the department by rule, consistent with
4 the purposes of this section, and is required to obtain a medical
5 examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on
6 July 8, 2014, or such subsequent date as may be provided by the
7 department by rule, consistent with the purposes of this section;

8 (b) "Excepted interstate," which means the CDL or CLP holder or
9 applicant operates or expects to operate in interstate commerce, but
10 engages exclusively in transportation or operations excepted under 49
11 C.F.R. Secs. 390.3(f), 391.2, 391.68, or 398.3, as they existed on
12 July 8, 2014, or such subsequent date as may be provided by the
13 department by rule, consistent with the purposes of this section,
14 from all or parts of the qualification requirements of 49 C.F.R. Part
15 391 as it existed on July 8, 2014, or such subsequent date as may be
16 provided by the department by rule, consistent with the purposes of
17 this section, and is therefore not required to obtain a medical
18 examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on
19 July 8, 2014, or such subsequent date as may be provided by the
20 department by rule, consistent with the purposes of this section;

21 (c) "Nonexcepted intrastate," which means the CDL or CLP holder
22 or applicant operates only in intrastate commerce and is therefore
23 subject to state driver qualification requirements; or

24 (d) "Excepted intrastate," which means the CDL or CLP holder or
25 applicant operates in intrastate commerce, but engages exclusively in
26 transportation or operations excepted from all or parts of the state
27 driver qualification requirements.

28 (23) "United States" means the fifty states and the District of
29 Columbia.

30 (24) "Verified positive drug test" means a drug test result or
31 validity testing result from a laboratory certified under the
32 authority of the federal department of health and human services
33 that:

34 (a) Indicates a drug concentration at or above the cutoff
35 concentration established under 49 C.F.R. Sec. 40.87; and

36 (b) Has undergone review and final determination by a medical
37 review officer.

38 A report that a person has refused a drug test, under
39 circumstances that constitute the refusal of a federal department of
40 transportation drug test under 49 C.F.R. Part 40, will be considered

1 equivalent to a report of a verified positive drug test for the
2 purposes of this chapter.

3 NEW SECTION. **Sec. 4.** The following acts or parts of acts are
4 each repealed:

5 (1) RCW 46.61.667 (Using a wireless communications device or
6 handheld mobile telephone while driving) and 2013 c 224 s 15, 2010 c
7 223 s 3, & 2007 c 417 s 2; and

8 (2) RCW 46.61.668 (Sending, reading, or writing a text message
9 while driving) and 2013 c 224 s 16, 2010 c 223 s 4, & 2007 c 416 s 1.

10 NEW SECTION. **Sec. 5.** This act takes effect January 1, 2018."

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11 On page 1, line 1 of the title, after "infraction;" strike the
12 remainder of the title and insert "amending RCW 46.25.010; adding new
13 sections to chapter 46.61 RCW; repealing RCW 46.61.667 and 46.61.668;
14 prescribing penalties; and providing an effective date."

EFFECT: (1) Replaces the language with SSB 5289 (distracted
driving).

(2) Removes the following exemptions contained in the house bill:

(a) A tow truck operator making a call only;

(b) After January 1, 2021, an autonomous vehicle while it is
operated in a mode that does not require the person to be in actual
physical control of a moving vehicle;

(c) Operating during an emergency situation or extraordinary
circumstances that have temporarily caused a significant traffic
delay.

(3) Modifies the exemption for a HAM operator by removing the
requirement that the operator be licensed by the FCC.

(4) Removes the limitation that citizen band two-way radio
operation exemption is limited to commercial drivers.

(5) Reduces the base penalty from \$48 to \$30 for the new
dangerously distracted driving infraction.

(6) Makes a technical correction to the definition of "serious
traffic violation" for commercial drivers to refer to the new driving
while using a personal electronic device infraction.

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