
SUBSTITUTE SENATE BILL 5838

State of Washington

61st Legislature

2010 Regular Session

By Senate Judiciary (originally sponsored by Senators McDermott, Jacobsen, Murray, Kohl-Welles, and Fairley)

READ FIRST TIME 02/05/10.

1 AN ACT Relating to negligent driving resulting in substantial
2 bodily harm, great bodily harm, or death of a vulnerable user of a
3 public way; amending RCW 46.20.342; adding a new section to chapter
4 46.61 RCW; creating a new section; prescribing penalties; and providing
5 an effective date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.61 RCW
8 to read as follows:

9 (1) A person commits negligent driving in the second degree with a
10 vulnerable user victim if, under circumstances constituting negligent
11 driving in the second degree, as defined in RCW 46.61.525, he or she
12 proximately causes the death, great bodily harm, or substantial bodily
13 harm of a vulnerable user of a public way.

14 (2) The law enforcement officer or prosecuting authority issuing
15 the notice of infraction for an offense under this section shall state
16 on the notice of infraction that the offense was a proximate cause of
17 death, great bodily harm, or substantial bodily harm, as defined in RCW
18 9A.04.110, of a vulnerable user of a public way. The court shall
19 notify the person in writing of the time, place, and date of the

1 hearing, and that date shall not be sooner than seven days from the
2 date of the notice, except by agreement. The form for the notice of
3 traffic infraction under this section shall be prescribed by rule of
4 the supreme court and, in addition to the requirements of RCW
5 46.63.060, shall:

6 (a) State that a hearing will be scheduled by the court to
7 determine the penalties under subsection (3) or (4) of this section
8 and, if necessary, provide an opportunity for the person to contest the
9 determination that the offense has been committed;

10 (b) State that (i) the person named in the notice of infraction is
11 required to appear at the scheduled hearing regardless of whether the
12 person named in the notice contests the determination that the offense
13 has been committed, (ii) failure to appear at the hearing will result
14 in the suspension of the person's driver's license or driving privilege
15 for a minimum of ninety days and continue thereafter until any
16 penalties imposed pursuant to this chapter have been satisfied; and
17 (iii) failure to appear at the hearing will result in the imposition of
18 a fine fixed by the court in an amount of at least one thousand dollars
19 and not to exceed five thousand dollars; and

20 (c) Include a statement of the monetary and nonmonetary penalties
21 established and available under this section and any other applicable
22 law.

23 (3) A person found to have committed negligent driving in the
24 second degree with a vulnerable user victim shall be required to:

25 (a) Pay a penalty of two hundred fifty dollars;

26 (b) Complete a traffic safety course approved by the court;

27 (c) Perform up to one hundred hours of community service, which
28 must be approved by the court and must include activities related to
29 driver improvement and providing public education on traffic safety;
30 and

31 (d) Submit certification to the court establishing that the
32 requirements of this subsection have been met.

33 (4) In lieu of the penalties imposed under subsection (3) of this
34 section, a person found to have committed a violation of this section
35 may elect to:

36 (a) Pay a fine fixed by the court in an amount of at least one
37 thousand dollars and not to exceed five thousand dollars; and

38 (b) Have his or her driving privileges suspended for ninety days.

1 (5) If a person found to have committed a violation of this section
2 does not complete all requirements of subsection (3) of this section
3 within one year of the date the violation of this section is found
4 committed and does not elect the penalties described in subsection (4)
5 of this section:

6 (a) The court shall impose a fine in an amount of at least one
7 thousand dollars and not to exceed five thousand dollars; and

8 (b) The person's driving privileges shall be suspended for ninety
9 days.

10 For good cause shown, the court may extend the period of time in
11 which the person must complete the requirements of subsection (3) of
12 this section before imposing the fine and driving privilege suspension
13 provided for in this subsection.

14 (6) If a person issued a notice of infraction for a violation of
15 this section fails to appear for a hearing scheduled pursuant to
16 subsection (2)(a) of this section:

17 (a) The court shall enter an order assessing the monetary penalty;

18 (b) The person's driving privileges shall be suspended for ninety
19 days; and

20 (c) The court shall notify the department in accordance with RCW
21 46.20.270 of the failure to respond to the notice of infraction or to
22 appear at a scheduled hearing.

23 For good cause shown, the court may reschedule or continue the
24 hearing scheduled pursuant to subsection (2)(a) of this section.

25 (7) An offense under this section is a traffic infraction. To the
26 extent not inconsistent with this section, the provisions of chapter
27 46.63 RCW shall apply to infractions under this section. Procedures
28 for the conduct of all hearings provided for in this section may be
29 established by rule of the supreme court.

30 (8) If a person's driving privileges are suspended pursuant to
31 subsection (4)(b), (5)(b), or (6)(b) of this section, the court shall
32 send notice of such suspension to the department.

33 (9) For the purposes of this section, "vulnerable user of a public
34 way" means: (a) A pedestrian; (b) a person riding an animal; or (c) a
35 person operating any of the following on a public way:

36 (i) A farm tractor or implement of husbandry without an enclosed
37 shell;

38 (ii) A skateboard;

1 (iii) Roller skates or in-line skates;
2 (iv) A scooter;
3 (v) A bicycle or tricycle;
4 (vi) An electric assist bicycle;
5 (vii) An electric personal assistive mobility device; or
6 (viii) A wheelchair conveyance or other personal mobility device.
7 (10) Any act prohibited by this section that also constitutes a
8 crime under any other law of this state may be the basis of prosecution
9 under such other law notwithstanding that it may also be the basis for
10 prosecution under this section.

11 **Sec. 2.** RCW 46.20.342 and 2008 c 282 s 4 are each amended to read
12 as follows:

13 (1) It is unlawful for any person to drive a motor vehicle in this
14 state while that person is in a suspended or revoked status or when his
15 or her privilege to drive is suspended or revoked in this or any other
16 state. Any person who has a valid Washington driver's license is not
17 guilty of a violation of this section.

18 (a) A person found to be (~~an~~) a habitual offender under chapter
19 46.65 RCW, who violates this section while an order of revocation
20 issued under chapter 46.65 RCW prohibiting such operation is in effect,
21 is guilty of driving while license suspended or revoked in the first
22 degree, a gross misdemeanor. Upon the first such conviction, the
23 person shall be punished by imprisonment for not less than ten days.
24 Upon the second conviction, the person shall be punished by
25 imprisonment for not less than ninety days. Upon the third or
26 subsequent conviction, the person shall be punished by imprisonment for
27 not less than one hundred eighty days. If the person is also convicted
28 of the offense defined in RCW 46.61.502 or 46.61.504, when both
29 convictions arise from the same event, the minimum sentence of
30 confinement shall be not less than ninety days. The minimum sentence
31 of confinement required shall not be suspended or deferred. A
32 conviction under this subsection does not prevent a person from
33 petitioning for reinstatement as provided by RCW 46.65.080.

34 (b) A person who violates this section while an order of suspension
35 or revocation prohibiting such operation is in effect and while the
36 person is not eligible to reinstate his or her driver's license or
37 driving privilege, other than for a suspension for the reasons

1 described in (c) of this subsection, is guilty of driving while license
2 suspended or revoked in the second degree, a gross misdemeanor. This
3 subsection applies when a person's driver's license or driving
4 privilege has been suspended or revoked by reason of:

5 (i) A conviction of a felony in the commission of which a motor
6 vehicle was used;

7 (ii) A previous conviction under this section;

8 (iii) A notice received by the department from a court or diversion
9 unit as provided by RCW 46.20.265, relating to a minor who has
10 committed, or who has entered a diversion unit concerning an offense
11 relating to alcohol, legend drugs, controlled substances, or imitation
12 controlled substances;

13 (iv) A conviction of RCW 46.20.410, relating to the violation of
14 restrictions of an occupational driver's license, a temporary
15 restricted driver's license, or an ignition interlock driver's license;

16 (v) A conviction of RCW 46.20.345, relating to the operation of a
17 motor vehicle with a suspended or revoked license;

18 (vi) A conviction of RCW 46.52.020, relating to duty in case of
19 injury to or death of a person or damage to an attended vehicle;

20 (vii) A conviction of RCW 46.61.024, relating to attempting to
21 elude pursuing police vehicles;

22 (viii) A conviction of RCW 46.61.500, relating to reckless driving;

23 (ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a
24 person under the influence of intoxicating liquor or drugs;

25 (x) A conviction of RCW 46.61.520, relating to vehicular homicide;

26 (xi) A conviction of RCW 46.61.522, relating to vehicular assault;

27 (xii) A conviction of RCW 46.61.527(4), relating to reckless
28 endangerment of roadway workers;

29 (xiii) A conviction of RCW 46.61.530, relating to racing of
30 vehicles on highways;

31 (xiv) A conviction of RCW 46.61.685, relating to leaving children
32 in an unattended vehicle with motor running;

33 (xv) A conviction of RCW 46.61.740, relating to theft of motor
34 vehicle fuel;

35 (xvi) A conviction of RCW 46.64.048, relating to attempting,
36 aiding, abetting, coercing, and committing crimes;

37 (xvii) An administrative action taken by the department under
38 chapter 46.20 RCW; ((~~or~~))

1 (xviii) A conviction of a local law, ordinance, regulation, or
2 resolution of a political subdivision of this state, the federal
3 government, or any other state, of an offense substantially similar to
4 a violation included in this subsection; or

5 (xix) A finding that a person has committed a traffic infraction
6 under section 1 of this act and suspension of driving privileges
7 pursuant to section 1 (4)(b), (5)(b), or (6)(b) of this act.

8 (c) A person who violates this section when his or her driver's
9 license or driving privilege is, at the time of the violation,
10 suspended or revoked solely because (i) the person must furnish proof
11 of satisfactory progress in a required alcoholism or drug treatment
12 program, (ii) the person must furnish proof of financial responsibility
13 for the future as provided by chapter 46.29 RCW, (iii) the person has
14 failed to comply with the provisions of chapter 46.29 RCW relating to
15 uninsured accidents, (iv) the person has failed to respond to a notice
16 of traffic infraction, failed to appear at a requested hearing,
17 violated a written promise to appear in court, or has failed to comply
18 with the terms of a notice of traffic infraction or citation, as
19 provided in RCW 46.20.289, (v) the person has committed an offense in
20 another state that, if committed in this state, would not be grounds
21 for the suspension or revocation of the person's driver's license, (vi)
22 the person has been suspended or revoked by reason of one or more of
23 the items listed in (b) of this subsection, but was eligible to
24 reinstate his or her driver's license or driving privilege at the time
25 of the violation, or (vii) the person has received traffic citations or
26 notices of traffic infraction that have resulted in a suspension under
27 RCW 46.20.267 relating to intermediate drivers' licenses, or any
28 combination of (i) through (vii), is guilty of driving while license
29 suspended or revoked in the third degree, a misdemeanor.

30 (2) Upon receiving a record of conviction of any person or upon
31 receiving an order by any juvenile court or any duly authorized court
32 officer of the conviction of any juvenile under this section, the
33 department shall:

34 (a) For a conviction of driving while suspended or revoked in the
35 first degree, as provided by subsection (1)(a) of this section, extend
36 the period of administrative revocation imposed under chapter 46.65 RCW
37 for an additional period of one year from and after the date the person

1 would otherwise have been entitled to apply for a new license or have
2 his or her driving privilege restored; or

3 (b) For a conviction of driving while suspended or revoked in the
4 second degree, as provided by subsection (1)(b) of this section, not
5 issue a new license or restore the driving privilege for an additional
6 period of one year from and after the date the person would otherwise
7 have been entitled to apply for a new license or have his or her
8 driving privilege restored; or

9 (c) Not extend the period of suspension or revocation if the
10 conviction was under subsection (1)(c) of this section. If the
11 conviction was under subsection (1)(a) or (b) of this section and the
12 court recommends against the extension and the convicted person has
13 obtained a valid driver's license, the period of suspension or
14 revocation shall not be extended.

15 NEW SECTION. **Sec. 3.** This act applies to infractions committed on
16 or after the effective date of this act.

17 NEW SECTION. **Sec. 4.** This act takes effect July 1, 2011.

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