

SSB 5326 - H COMM AMD
By Committee on Judiciary

ADOPTED AS AMENDED 04/01/2011

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 RCW
4 to read as follows:

5 (1) A person commits negligent driving in the second degree with a
6 vulnerable user victim if, under circumstances not constituting
7 negligent driving in the first degree, he or she operates a vehicle, as
8 defined in RCW 46.04.670, in a manner that is both negligent and
9 endangers or is likely to endanger any person or property, and he or
10 she proximately causes the death, great bodily harm, or substantial
11 bodily harm of a vulnerable user of a public way.

12 (2) The law enforcement officer or prosecuting authority issuing
13 the notice of infraction for an offense under this section shall state
14 on the notice of infraction that the offense was a proximate cause of
15 death, great bodily harm, or substantial bodily harm, as defined in RCW
16 9A.04.110, of a vulnerable user of a public way.

17 (3) Persons under the age of sixteen who commit an infraction under
18 this section are subject to the provisions of RCW 13.40.250.

19 (4) A person found to have committed negligent driving in the
20 second degree with a vulnerable user victim shall be required to:

21 (a) Pay a monetary penalty of five thousand dollars, which may not
22 be reduced to an amount less than one thousand dollars; and

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

24 (5) In lieu of the penalties imposed under subsection (4) of this
25 section, a person found to have committed negligent driving in the
26 second degree with a vulnerable user victim who requests and personally
27 appears for a hearing pursuant to RCW 46.63.070 (1) or (2) may elect
28 to:

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

1 (b) Attend traffic school for a number of days to be determined by
2 the court pursuant to chapter 46.83 RCW;

3 (c) Perform community service for a number of hours to be
4 determined by the court, which may not exceed one hundred hours, and
5 which must include activities related to driver improvement and
6 providing public education on traffic safety; and

7 (d) Submit certification to the court establishing that the
8 requirements of this subsection have been met within one year of the
9 hearing.

10 (6) If a person found to have committed a violation of this section
11 elects the penalties imposed under subsection (5) of this section, the
12 court shall impose the penalties under subsection (5) of this section
13 and the court may assess costs as the court deems appropriate for
14 administrative processing.

15 (7) Except as provided in (b) of this subsection, if a person found
16 to have committed a violation of this section elects the penalties
17 under subsection (5) of this section but does not complete all
18 requirements of subsection (5) of this section within one year of the
19 hearing:

20 (a)(i) The court shall impose a monetary penalty in the amount of
21 five thousand dollars, which may not be reduced to an amount less than
22 one thousand dollars; and

23 (ii) The person's driving privileges shall be suspended for ninety
24 days.

25 (b) For good cause shown, the court may extend the period of time
26 in which the person must complete the requirements of subsection (5) of
27 this section before any of the penalties provided in this subsection
28 are imposed.

29 (8) An offense under this section is a traffic infraction. To the
30 extent not inconsistent with this section, the provisions of chapter
31 46.63 RCW shall apply to infractions under this section. Procedures
32 for the conduct of all hearings provided for in this section may be
33 established by rule of the supreme court.

34 (9) If a person is penalized under subsection (4) of this section,
35 then the court shall notify the department, and the department shall
36 suspend the person's driving privileges. If a person fails to meet the
37 requirements of subsection (5) of this section, the court shall notify
38 the department that the person has failed to meet the requirements of

1 subsection (5) of this section and the department shall suspend the
2 person's driving privileges. Notice provided by the court under this
3 subsection must be in a form specified by the department.

4 (10) Any act prohibited by this section that also constitutes a
5 crime under any other law of this state may be the basis of prosecution
6 under such other law notwithstanding that it may also be the basis for
7 prosecution under this section.

8 (11) For the purposes of this section:

9 (a) "Great bodily harm" and "substantial bodily harm" have the same
10 meaning as provided in RCW 9A.04.110.

11 (b) "Negligent" has the same meaning as provided in RCW
12 46.61.525(2).

13 (c) "Vulnerable user of a public way" means:

14 (i) A pedestrian;

15 (ii) A person riding an animal; or

16 (iii) A person operating any of the following on a public way:

17 (A) A farm tractor or implement of husbandry, without an enclosed
18 shell;

19 (B) A bicycle;

20 (C) An electric-assisted bicycle;

21 (D) An electric personal assistive mobility device;

22 (E) A moped;

23 (F) A motor-driven cycle;

24 (G) A motorized foot scooter; or

25 (H) A motorcycle.

26 **Sec. 2.** RCW 46.20.342 and 2010 c 269 s 7 and 2010 c 252 s 4 are
27 each reenacted and amended to read as follows:

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

33 (a) A person found to be (~~an~~) a habitual offender under chapter
34 46.65 RCW, who violates this section while an order of revocation
35 issued under chapter 46.65 RCW prohibiting such operation is in effect,
36 is guilty of driving while license suspended or revoked in the first
37 degree, a gross misdemeanor. Upon the first such conviction, the

1 person shall be punished by imprisonment for not less than ten days.
2 Upon the second conviction, the person shall be punished by
3 imprisonment for not less than ninety days. Upon the third or
4 subsequent conviction, the person shall be punished by imprisonment for
5 not less than one hundred eighty days. If the person is also convicted
6 of the offense defined in RCW 46.61.502 or 46.61.504, when both
7 convictions arise from the same event, the minimum sentence of
8 confinement shall be not less than ninety days. The minimum sentence
9 of confinement required shall not be suspended or deferred. A
10 conviction under this subsection does not prevent a person from
11 petitioning for reinstatement as provided by RCW 46.65.080.

12 (b) A person who violates this section while an order of suspension
13 or revocation prohibiting such operation is in effect and while the
14 person is not eligible to reinstate his or her driver's license or
15 driving privilege, other than for a suspension for the reasons
16 described in (c) of this subsection, is guilty of driving while license
17 suspended or revoked in the second degree, a gross misdemeanor. For
18 the purposes of this subsection, a person is not considered to be
19 eligible to reinstate his or her driver's license or driving privilege
20 if the person is eligible to obtain an ignition interlock driver's
21 license but did not obtain such a license. This subsection applies
22 when a person's driver's license or driving privilege has been
23 suspended or revoked by reason of:

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

26 (ii) A previous conviction under this section;

27 (iii) A notice received by the department from a court or diversion
28 unit as provided by RCW 46.20.265, relating to a minor who has
29 committed, or who has entered a diversion unit concerning an offense
30 relating to alcohol, legend drugs, controlled substances, or imitation
31 controlled substances;

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

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

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

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

3 (viii) A conviction of RCW 46.61.212(4), relating to reckless
4 endangerment of emergency zone workers;

5 (ix) A conviction of RCW 46.61.500, relating to reckless driving;

6 (x) A conviction of RCW 46.61.502 or 46.61.504, relating to a
7 person under the influence of intoxicating liquor or drugs;

8 (xi) A conviction of RCW 46.61.520, relating to vehicular homicide;

9 (xii) A conviction of RCW 46.61.522, relating to vehicular assault;

10 (xiii) A conviction of RCW 46.61.527(4), relating to reckless
11 endangerment of roadway workers;

12 (xiv) A conviction of RCW 46.61.530, relating to racing of vehicles
13 on highways;

14 (xv) A conviction of RCW 46.61.685, relating to leaving children in
15 an unattended vehicle with motor running;

16 (xvi) A conviction of RCW 46.61.740, relating to theft of motor
17 vehicle fuel;

18 (xvii) A conviction of RCW 46.64.048, relating to attempting,
19 aiding, abetting, coercing, and committing crimes;

20 (xviii) An administrative action taken by the department under
21 chapter 46.20 RCW; (~~or~~)

22 (xix) A conviction of a local law, ordinance, regulation, or
23 resolution of a political subdivision of this state, the federal
24 government, or any other state, of an offense substantially similar to
25 a violation included in this subsection; or

26 (xx) A finding that a person has committed a traffic infraction
27 under section 1 of this act and suspension of driving privileges
28 pursuant to section 1 (4)(b) or (7)(a)(ii) of this act.

29 (c) A person who violates this section when his or her driver's
30 license or driving privilege is, at the time of the violation,
31 suspended or revoked solely because (i) the person must furnish proof
32 of satisfactory progress in a required alcoholism or drug treatment
33 program, (ii) the person must furnish proof of financial responsibility
34 for the future as provided by chapter 46.29 RCW, (iii) the person has
35 failed to comply with the provisions of chapter 46.29 RCW relating to
36 uninsured accidents, (iv) the person has failed to respond to a notice
37 of traffic infraction, failed to appear at a requested hearing,
38 violated a written promise to appear in court, or has failed to comply

1 with the terms of a notice of traffic infraction or citation, as
2 provided in RCW 46.20.289, (v) the person has committed an offense in
3 another state that, if committed in this state, would not be grounds
4 for the suspension or revocation of the person's driver's license, (vi)
5 the person has been suspended or revoked by reason of one or more of
6 the items listed in (b) of this subsection, but was eligible to
7 reinstate his or her driver's license or driving privilege at the time
8 of the violation, or (vii) the person has received traffic citations or
9 notices of traffic infraction that have resulted in a suspension under
10 RCW 46.20.267 relating to intermediate drivers' licenses, or any
11 combination of (c)(i) through (vii) of this subsection, is guilty of
12 driving while license suspended or revoked in the third degree, a
13 misdemeanor. For the purposes of this subsection, a person is not
14 considered to be eligible to reinstate his or her driver's license or
15 driving privilege if the person is eligible to obtain an ignition
16 interlock driver's license but did not obtain such a license.

17 (2) Upon receiving a record of conviction of any person or upon
18 receiving an order by any juvenile court or any duly authorized court
19 officer of the conviction of any juvenile under this section, the
20 department shall:

21 (a) For a conviction of driving while suspended or revoked in the
22 first degree, as provided by subsection (1)(a) of this section, extend
23 the period of administrative revocation imposed under chapter 46.65 RCW
24 for an additional period of one year from and after the date the person
25 would otherwise have been entitled to apply for a new license or have
26 his or her driving privilege restored; or

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

33 (c) Not extend the period of suspension or revocation if the
34 conviction was under subsection (1)(c) of this section. If the
35 conviction was under subsection (1)(a) or (b) of this section and the
36 court recommends against the extension and the convicted person has
37 obtained a valid driver's license, the period of suspension or
38 revocation shall not be extended.

1 **Sec. 3.** RCW 46.63.070 and 2006 c 327 s 7 are each amended to read
2 as follows:

3 (1) Any person who receives a notice of traffic infraction shall
4 respond to such notice as provided in this section within fifteen days
5 of the date of the notice.

6 (2) If the person determined to have committed the infraction does
7 not contest the determination the person shall respond by completing
8 the appropriate portion of the notice of infraction and submitting it,
9 either by mail or in person, to the court specified on the notice. A
10 check or money order in the amount of the penalty prescribed for the
11 infraction must be submitted with the response. When a response which
12 does not contest the determination is received, an appropriate order
13 shall be entered in the court's records, and a record of the response
14 and order shall be furnished to the department in accordance with RCW
15 46.20.270.

16 (3) If the person determined to have committed the infraction
17 wishes to contest the determination the person shall respond by
18 completing the portion of the notice of infraction requesting a hearing
19 and submitting it, either by mail or in person, to the court specified
20 on the notice. The court shall notify the person in writing of the
21 time, place, and date of the hearing, and that date shall not be sooner
22 than seven days from the date of the notice, except by agreement.

23 (4) If the person determined to have committed the infraction does
24 not contest the determination but wishes to explain mitigating
25 circumstances surrounding the infraction the person shall respond by
26 completing the portion of the notice of infraction requesting a hearing
27 for that purpose and submitting it, either by mail or in person, to the
28 court specified on the notice. The court shall notify the person in
29 writing of the time, place, and date of the hearing.

30 (5)(a) Except as provided in (b) (~~and~~), (c), and (d) of this
31 subsection, in hearings conducted pursuant to subsections (3) and (4)
32 of this section, the court may defer findings, or in a hearing to
33 explain mitigating circumstances may defer entry of its order, for up
34 to one year and impose conditions upon the defendant the court deems
35 appropriate. Upon deferring findings, the court may assess costs as
36 the court deems appropriate for administrative processing. If at the
37 end of the deferral period the defendant has met all conditions and has

1 not been determined to have committed another traffic infraction, the
2 court may dismiss the infraction.

3 (b) A person may not receive more than one deferral within a seven-
4 year period for traffic infractions for moving violations and more than
5 one deferral within a seven-year period for traffic infractions for
6 nonmoving violations.

7 (c) A person who is the holder of a commercial driver's license or
8 who was operating a commercial motor vehicle at the time of the
9 violation may not receive a deferral under this section.

10 (d) A person who commits negligent driving in the second degree
11 with a vulnerable user victim may not receive a deferral for this
12 infraction under this section.

13 (6) If any person issued a notice of traffic infraction:

14 (a) Fails to respond to the notice of traffic infraction as
15 provided in subsection (2) of this section; or

16 (b) Fails to appear at a hearing requested pursuant to subsection
17 (3) or (4) of this section;

18 the court shall enter an appropriate order assessing the monetary
19 penalty prescribed for the traffic infraction and any other penalty
20 authorized by this chapter and shall notify the department in
21 accordance with RCW 46.20.270, of the failure to respond to the notice
22 of infraction or to appear at a requested hearing.

23 NEW SECTION. Sec. 4. This act applies to infractions committed on
24 or after the effective date of this section.

25 NEW SECTION. Sec. 5. This act takes effect July 1, 2012."

26 Correct the title.

EFFECT: (1) Changes the requirements in the alternative penalty
to require the completion of traffic safety school (rather than a
court-approved traffic safety course) and the completion of community
service (rather than "court-approved" community service).

(2) Requires courts to impose the alternative penalty when a person
found to have committed the infraction elects the alternative penalty.

(3) Allows the courts to impose administrative costs when imposing
the alternative penalty.

(4) Adds motorcyclists to the definition of a vulnerable user of a public way.

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