

SSB 5289 - H AMD 565

By Representative Farrell

ADOPTED 04/19/2017

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

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

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

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

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

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

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

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

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

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

1 (5) For purposes of this section:

2 (a) "Driving" means to operate a motor vehicle on a public
3 highway, including while temporarily stationary because of traffic,
4 a traffic control device, or other momentary delays. "Driving" does
5 not include when the vehicle has pulled over to the side of, or off
6 of, an active roadway and has stopped in a location where it can
7 safely remain stationary.

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

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

16 (i) Holding a personal electronic device in either hand or both
17 hands;

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

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

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25 NEW SECTION. **Sec. 2.** The following acts or parts of acts are
26 each repealed:

27 (1)RCW 46.61.667 (Using a wireless communications device or
28 handheld mobile telephone while driving) and 2013 c 224 s 15, 2010 c
29 223 s 3, & 2007 c 417 s 2; and

30 (2)RCW 46.61.668 (Sending, reading, or writing a text message
31 while driving) and 2013 c 224 s 16, 2010 c 223 s 4, & 2007 c 416 s
32 1.

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

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

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

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

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

18 (3) The distracted driving prevention account is created in the
19 state treasury. All receipts from the base penalty in subsection (1)
20 of this section must be deposited into the account. Moneys in the
21 account may be spent only after appropriation. Expenditures from the
22 account may be used only to support programs dedicated to reducing
23 distracted driving and improving driver education on distracted
24 driving.

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

28 The definitions set forth in this section apply throughout this
29 chapter.

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

33 (2) "Alcohol concentration" means:
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1 (a) The number of grams of alcohol per one hundred milliliters
2 of blood; or

3 (b) The number of grams of alcohol per two hundred ten liters of
4 breath.

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

9 (4) The "commercial driver's license information system" (CDLIS)
10 is the information system established pursuant to 49 U.S.C. Sec.
11 31309 to serve as a clearinghouse for locating information related
12 to the licensing and identification of commercial motor vehicle
13 drivers.

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

16 (6) "Commercial motor vehicle" means a motor vehicle or
17 combination of motor vehicles used in commerce to transport
18 passengers or property if the motor vehicle:

19 (a) Has a gross combination weight rating or gross combination
20 weight of 11,794 kilograms or more (26,001 pounds or more),
21 whichever is greater, inclusive of a [any] towed unit [or units]
22 with a gross vehicle weight rating or gross vehicle weight of more
23 than 4,536 kilograms (10,000 pounds or more), whichever is greater;
24 or

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

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

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

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

33 (7) "Conviction" means an unvacated adjudication of guilt, or a
34 determination that a person has violated or failed to comply with

1 the law in a court of original jurisdiction or by an authorized
2 administrative tribunal, an unvacated forfeiture of bail or
3 collateral deposited to secure the person's appearance in court, a
4 plea of guilty or nolo contendere accepted by the court, the payment
5 of a fine or court cost, entry into a deferred prosecution program
6 under chapter 10.05 RCW, or violation of a condition of release
7 without bail, regardless of whether or not the penalty is rebated,
8 suspended, or probated.

9 (8) "Disqualification" means a prohibition against driving a
10 commercial motor vehicle.

11 (9) "Drive" means to drive, operate, or be in physical control
12 of a motor vehicle in any place open to the general public for
13 purposes of vehicular traffic. For purposes of RCW 46.25.100,
14 46.25.110, and 46.25.120, "drive" includes operation or physical
15 control of a motor vehicle anywhere in the state.

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

19 (11) "Employer" means any person, including the United States, a
20 state, or a political subdivision of a state, who owns or leases a
21 commercial motor vehicle, or assigns a person to drive a commercial
22 motor vehicle.

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

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1 (13) "Hazardous materials" means any material that has been
2 designated as hazardous under 49 U.S.C. Sec. 5103 and is required to
3 be placarded under subpart F of 49 C.F.R. Part 172 or any quantity
4 of a material listed as a select agent or toxin in 42 C.F.R. Part
5 73.

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

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

17 (16) "Positive alcohol confirmation test" means an alcohol
18 confirmation test that:

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

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

22 A report that a person has refused an alcohol test, under
23 circumstances that constitute the refusal of an alcohol test under
24 49 C.F.R. Part 40, will be considered equivalent to a report of a
25 positive alcohol confirmation test for the purposes of this chapter.

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

30 (18) "Serious traffic violation" means:

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

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

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1 (c) Driving while using a (~~handheld wireless communications~~
2 ~~device [handheld mobile telephone], defined as a violation of RCW~~
3 ~~46.61.667(1)(b)) personal electronic device, defined as a violation
4 of section 1 of this act, which includes in the activities it
5 prohibits driving while holding a personal electronic device in
6 either or both hands and using a hand or finger for texting, or an
7 equivalent administrative rule or local law, ordinance, rule, or
8 resolution;~~

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

12 (~~(e))~~) A violation of a state or local law relating to motor
13 vehicle traffic control, other than a parking violation, arising in
14 connection with an accident or collision resulting in death to any
15 person;

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

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

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

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

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

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

4 (21) "Tank vehicle" means any commercial motor vehicle that is
5 designed to transport any liquid or gaseous materials within a tank
6 or tanks having an individual rated capacity of more than one
7 hundred nineteen gallons and an aggregate rated capacity of one
8 thousand gallons or more that is either permanently or temporarily
9 attached to the vehicle or the chassis. A commercial motor vehicle
10 transporting an empty storage container tank, not designed for
11 transportation, with a rated capacity of one thousand gallons or
12 more that is temporarily attached to a flatbed trailer is not
13 considered a tank vehicle.

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

15 (a) "Nonexcepted interstate," which means the CDL or CLP holder
16 or applicant operates or expects to operate in interstate commerce,
17 is both subject to and meets the qualification requirements under 49
18 C.F.R. Part 391 as it existed on July 8, 2014, or such subsequent
19 date as may be provided by the department by rule, consistent with
20 the purposes of this section, and is required to obtain a medical
21 examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on
22 July 8, 2014, or such subsequent date as may be provided by the
23 department by rule, consistent with the purposes of this section;

24 (b) "Excepted interstate," which means the CDL or CLP holder or
25 applicant operates or expects to operate in interstate commerce, but
26 engages exclusively in transportation or operations excepted under
27 49 C.F.R. Secs. 390.3(f), 391.2, 391.68, or 398.3, as they existed
28 on July 8, 2014, or such subsequent date as may be provided by the
29 department by rule, consistent with the purposes of this section,
30 from all or parts of the qualification requirements of 49 C.F.R.
31 Part 391 as it existed on July 8, 2014, or such subsequent date as
32 may be provided by the department by rule, consistent with the
33 purposes of this section, and is therefore not required to obtain a
34 medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it

1 existed on July 8, 2014, or such subsequent date as may be provided
2 by the department by rule, consistent with the purposes of this
3 section;

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

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

11 (23) "United States" means the fifty states and the District of
12 Columbia.

13 (24) "Verified positive drug test" means a drug test result or
14 validity testing result from a laboratory certified under the
15 authority of the federal department of health and human services
16 that:

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

19 (b) Has undergone review and final determination by a medical
20 review officer.

21 A report that a person has refused a drug test, under
22 circumstances that constitute the refusal of a federal department of
23 transportation drug test under 49 C.F.R. Part 40, will be considered
24 equivalent to a report of a verified positive drug test for the
25 purposes of this chapter.

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27 NEW SECTION. **Sec. 5.** This act takes effect January 1, 2019."

28 Correct the title.

EFFECT: (1) Modifies the definition of "serious traffic
violation," as that term applies to grounds for temporary
disqualification from driving a commercial motor vehicle, to
replace references to current laws against using a handheld mobile
telephone and texting while driving with a reference to the

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prohibition against using a personal electronic device while driving.

(2) Moves the act's effective date back by one year, from January 1, 2018, to January 1, 2019.

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