**1493-S.E AMS PADD S5644.1 - NOT FOR FLOOR USE**

**ESHB 1493** - S AMD TO TRAN COMM AMD (S-5448.1/24) **864**

By Senator Padden

**PULLED 02/29/2024**

On page 60, line 19, after "concentration of" strike "0.08" and insert "((~~0.08~~)) 0.06"

On page 60, line 37, after "be" strike "0.08" and insert "((~~0.08~~)) 0.06"

On page 61, line 16, after "concentration of" strike "0.08" and insert "((~~0.08~~)) 0.06"

On page 72, line 14, after "alcohol concentration of" strike "0.08" and insert "((~~0.08~~)) 0.06"

On page 76, line 13, after "concentration of" strike "0.08" and insert "((~~0.08~~)) 0.06"

On page 76, line 38, after "be" strike "0.08" and insert "((~~0.08~~)) 0.06"

On page 77, line 18, after "of" strike "0.08" and insert "((~~0.08~~)) 0.06"

On page 78, after line 5, insert the following:

"**Sec.**  RCW 46.61.506 and 2020 c 80 s 33 are each amended to read as follows:

(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than ((~~0.08~~)) 0.06 or the person's THC concentration is less than 5.00, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

(2)(a) The breath analysis of the person's alcohol concentration shall be based upon grams of alcohol per ((~~two hundred ten~~)) 210 liters of breath.

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

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

(3) Analysis of the person's blood or breath to be considered valid under the provisions of this section or RCW 46.61.502 or 46.61.504 shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist is directed to approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the state toxicologist.

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

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

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

(iii) The person being tested did not have any foreign substances, not to include dental work or piercings, fixed or removable, in his or her mouth at the beginning of the ((~~fifteen-minute~~)) 15-minute observation period;

(iv) Prior to the start of the test, the temperature of any liquid simulator solution utilized as an external standard, as measured by a thermometer approved of by the state toxicologist was ((~~thirty-four~~)) 34 degrees centigrade plus or minus 0.3 degrees centigrade;

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

(vi) The two breath samples agree to within plus or minus ((~~ten~~)) 10 percent of their mean to be determined by the method approved by the state toxicologist;

(vii) The result of the test of the liquid simulator solution external standard or dry gas external standard result did lie between ((~~.072 to .088~~)) .055 to .065 inclusive; and

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

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

(c) Nothing in this section shall be deemed to prevent the subject of the test from challenging the reliability or accuracy of the test, the reliability or functioning of the instrument, or any maintenance procedures. Such challenges, however, shall not preclude the admissibility of the test once the prosecution or department has made a prima facie showing of the requirements contained in (a) of this subsection. Instead, such challenges may be considered by the trier of fact in determining what weight to give to the test result.

(5) When a blood test is administered under the provisions of RCW 46.20.308, the withdrawal of blood for the purpose of determining its alcohol or drug content may be performed only by a physician licensed under chapter 18.71 RCW; an osteopathic physician licensed under chapter 18.57 RCW; a registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed under chapter 18.79 RCW; a physician assistant licensed under chapter 18.71A RCW; an advanced emergency medical technician or paramedic certified under chapter 18.71 RCW; or a medical assistant-certified or medical assistant-phlebotomist certified under chapter 18.360 RCW, a person holding another credential under Title 18 RCW whose scope of practice includes performing venous blood draws, or a forensic phlebotomist certified under chapter 18.360 RCW. When the blood test is performed outside the state of Washington, the withdrawal of blood for the purpose of determining its alcohol or drug content may be performed by any person who is authorized by the out-of-state jurisdiction to perform venous blood draws. Proof of qualification to draw blood may be established through the department of health's provider credential search. This limitation shall not apply to the taking of breath specimens.

(6) When a venous blood sample is performed by a forensic phlebotomist certified under chapter 18.360 RCW, it must be done under the following conditions:

(a) If taken at the scene, it must be performed in an ambulance or aid service vehicle licensed by the department of health under chapter 18.73 RCW.

(b) The collection of blood samples must not interfere with the provision of essential medical care.

(c) The blood sample must be collected using sterile equipment and the skin area of puncture must be thoroughly cleansed and disinfected.

(d) The person whose blood is collected must be seated, reclined, or lying down when the blood is collected.

(7) The person tested may have a licensed or certified health care provider listed in subsection (5) of this section, or a qualified technician, chemist, or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The test will be admissible if the person establishes the general acceptability of the testing technique or method. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

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

**Sec.**  RCW 46.20.308 and 2022 c 16 s 38 are each amended to read as follows:

(1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath for the purpose of determining the alcohol concentration in his or her breath if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503.

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of ((~~twenty-one~~)) 21. Prior to administering a breath test pursuant to this section, the officer shall inform the person of his or her right under this section to refuse the breath test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver, in substantially the following language, that:

(a) If the driver refuses to take the test, the driver's license, permit, or privilege to drive will be revoked or denied for at least one year; and

(b) If the driver refuses to take the test, the driver's refusal to take the test may be used in a criminal trial; and

(c) If the driver submits to the test and the test is administered, the driver's license, permit, or privilege to drive will be suspended, revoked, or denied for at least ((~~ninety~~)) 90 days if:

(i) The driver is age ((~~twenty-one~~)) 21 or over and the test indicates either that the alcohol concentration of the driver's breath is ((~~0.08~~)) 0.06 or more; or

(ii) The driver is under age ((~~twenty-one~~)) 21 and the test indicates either that the alcohol concentration of the driver's breath is 0.02 or more; or

(iii) The driver is under age ((~~twenty-one~~)) 21 and the driver is in violation of RCW 46.61.502 or 46.61.504; and

(d) If the driver's license, permit, or privilege to drive is suspended, revoked, or denied the driver may be eligible to immediately apply for an ignition interlock driver's license.

(3) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested exercises the right, granted herein, by refusing upon the request of a law enforcement officer to submit to a test or tests of his or her breath, no test shall be given except as otherwise authorized by law.

(4) Nothing in subsection (1), (2), or (3) of this section precludes a law enforcement officer from obtaining a person's blood to test for alcohol, cannabis, or any drug, pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law. Any blood drawn for the purpose of determining the person's alcohol, cannabis levels, or any drug, is drawn pursuant to this section when the officer has reasonable grounds to believe that the person is in physical control or driving a vehicle under the influence or in violation of RCW 46.61.503.

(5) If, after arrest and after any other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is ((~~0.08~~)) 0.06 or more, or the THC concentration of the person's blood is 5.00 or more, if the person is age ((~~twenty-one~~)) 21 or over, or that the alcohol concentration of the person's breath or blood is 0.02 or more, or the THC concentration of the person's blood is above 0.00, if the person is under the age of ((~~twenty-one~~)) 21, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where applicable, if the arrest results in a test of the person's blood, shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, or deny the person's license, permit, or privilege to drive as required by subsection (6) of this section;

(b) Serve notice in writing on the person on behalf of the department of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing as provided by subsection (7) of this section;

(c) Serve notice in writing that the license or permit, if any, is a temporary license that is valid for ((~~thirty~~)) 30 days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (7) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

(d) Immediately notify the department of the arrest and transmit to the department within ((~~seventy-two~~)) 72 hours, except as delayed as the result of a blood test, a sworn report or report under a declaration authorized by chapter 5.50 RCW that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of ((~~twenty-one~~)) 21 years and had been driving or was in actual physical control of a motor vehicle while having an alcohol or THC concentration in violation of RCW 46.61.503;

(ii) That after receipt of any applicable warnings required by subsection (2) of this section the person refused to submit to a test of his or her breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was ((~~0.08~~)) 0.06 or more, or the THC concentration of the person's blood was 5.00 or more, if the person is age ((~~twenty-one~~)) 21 or over, or that the alcohol concentration of the person's breath or blood was 0.02 or more, or the THC concentration of the person's blood was above 0.00, if the person is under the age of ((~~twenty-one~~)) 21; and

(iii) Any other information that the director may require by rule.

(6) The department of licensing, upon the receipt of a sworn report or report under a declaration authorized by chapter 5.50 RCW under subsection (5)(d) of this section, shall suspend, revoke, or deny the person's license, permit, or privilege to drive or any nonresident operating privilege, as provided in RCW 46.20.3101, such suspension, revocation, or denial to be effective beginning ((~~thirty~~)) 30 days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or when sustained at a hearing pursuant to subsection (7) of this section, whichever occurs first.

(7) A person receiving notification under subsection (5)(b) of this section may, within seven days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of ((~~three hundred seventy-five dollars~~)) $375 as part of the request. If the request is mailed, it must be postmarked within seven days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required ((~~three hundred seventy-five dollar~~)) $375 fee, the department shall afford the person an opportunity for a hearing. The department may waive the required ((~~three hundred seventy-five dollar~~)) $375 fee if the person is an indigent as defined in RCW 10.101.010. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within ((~~thirty~~)) 30 days, excluding Saturdays, Sundays, and legal holidays, following the date of timely receipt of such request for a formal hearing before the department or ((~~thirty~~)) 30 days, excluding Saturdays, Sundays, and legal holidays following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license under subsection (5) of this section extended, if the person is otherwise eligible for licensing. Unless otherwise agreed to by the department and the person, the department must give five days notice of the hearing to the person. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more, or THC in his or her system in a concentration above 0.00, if the person was under the age of ((~~twenty-one~~)) 21, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was ((~~0.08~~)) 0.06 or more, or the THC concentration of the person's blood was 5.00 or more, if the person was age ((~~twenty-one~~)) 21 or over at the time of the arrest, or that the alcohol concentration of the person's breath or blood was 0.02 or more, or the THC concentration of the person's blood was above 0.00, if the person was under the age of ((~~twenty-one~~)) 21 at the time of the arrest. Where a person is found to be in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was under the age of ((~~twenty-one~~)) 21 at the time of the arrest and was in physical control of a motor vehicle while having alcohol in his or her system in a concentration of 0.02 or THC concentration above 0.00, the person may petition the hearing officer to apply the affirmative defense found in RCW 46.61.504(3) and 46.61.503(2). The driver has the burden to prove the affirmative defense by a preponderance of the evidence. The sworn report or report under a declaration authorized by chapter 5.50 RCW submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more, or THC in his or her system in a concentration above 0.00, and was under the age of ((~~twenty-one~~)) 21 and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by chapter 5.50 RCW of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, or denial either be rescinded or sustained.

(8) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within ((~~thirty~~)) 30 days after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, or denial. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, or denial as expeditiously as possible. The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for further proceedings. The decision of the superior court must be in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, or denial it may impose conditions on such stay.

(9)(a) If a person whose driver's license, permit, or privilege to drive has been or will be suspended, revoked, or denied under subsection (6) of this section, other than as a result of a breath test refusal, and who has not committed an offense for which he or she was granted a deferred prosecution under chapter 10.05 RCW, petitions a court for a deferred prosecution on criminal charges arising out of the arrest for which action has been or will be taken under subsection (6) of this section, or notifies the department of licensing of the intent to seek such a deferred prosecution, then the license suspension or revocation shall be stayed pending entry of the deferred prosecution. The stay shall not be longer than ((~~one hundred fifty~~)) 150 days after the date charges are filed, or two years after the date of the arrest, whichever time period is shorter. If the court stays the suspension, revocation, or denial, it may impose conditions on such stay. If the person is otherwise eligible for licensing, the department shall issue a temporary license, or extend any valid temporary license under subsection (5) of this section, for the period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary license or extension of a temporary license issued under this subsection.

(b) A suspension, revocation, or denial imposed under this section, other than as a result of a breath test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(c) The provisions of (b) of this subsection relating to a stay of a suspension, revocation, or denial and the cancellation of any suspension, revocation, or denial do not apply to the suspension, revocation, denial, or disqualification of a person's commercial driver's license or privilege to operate a commercial motor vehicle.

(10) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

**Sec.**  RCW 46.20.3101 and 2020 c 330 s 6 are each amended to read as follows:

Pursuant to RCW 46.20.308, the department shall suspend, revoke, or deny the arrested person's license, permit, or privilege to drive as follows:

(1) In the case of a person who has refused a test or tests:

(a) For a first refusal within seven years, where there has not been a previous incident within seven years that resulted in administrative action under this section, revocation or denial for one year;

(b) For a second or subsequent refusal within seven years, or for a first refusal where there has been one or more previous incidents within seven years that have resulted in administrative action under this section, revocation or denial for two years or until the person reaches age ((~~twenty-one~~)) 21, whichever is longer.

(2) In the case of an incident where a person has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was ((~~0.08~~)) 0.06 or more, or that the THC concentration of the person's blood was 5.00 or more:

(a) For a first incident within seven years, where there has not been a previous incident within seven years that resulted in administrative action under this section, suspension for ((~~ninety~~)) 90 days, unless the person successfully completes or is enrolled in a pretrial 24/7 sobriety program;

(b) For a second or subsequent incident within seven years, revocation or denial for two years.

(3) In the case of an incident where a person under age ((~~twenty-one~~)) 21 has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was 0.02 or more, or that the THC concentration of the person's blood was above 0.00:

(a) For a first incident within seven years, suspension or denial for ((~~ninety~~)) 90 days;

(b) For a second or subsequent incident within seven years, revocation or denial for one year or until the person reaches age ((~~twenty-one~~)) 21, whichever is longer.

(4) The department shall grant credit on a day-for-day basis for a suspension, revocation, or denial imposed under this section for any portion of a suspension, revocation, or denial already served under RCW 46.61.5055 arising out of the same incident. If a person has already served a suspension, revocation, or denial under RCW 46.61.5055 for a period equal to or greater than the period imposed under this section, the department shall provide notice of full credit, shall provide for no further suspension or revocation under this section, and shall impose no additional reissue fees for this credit.

**Sec.**  RCW 46.25.090 and 2023 c 35 s 6 are each amended to read as follows:

(1) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if a report has been received by the department pursuant to RCW 46.20.308 or 46.25.120, or if the person has been convicted of a first violation, within this or any other jurisdiction, of:

(a) Driving a motor vehicle under the influence of alcohol or any drug;

(b) Driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more or any measurable amount of THC concentration, or driving a noncommercial motor vehicle while the alcohol concentration in the person's system is ((~~0.08~~)) 0.06 or more, or is 0.02 or more if the person is under age 21, or with a THC concentration of 5.00 nanograms per milliliter of whole blood or more, or a THC concentration above 0.00 if the person is under the age of 21, as determined by any testing methods approved by law in this state or any other state or jurisdiction;

(c) Leaving the scene of an accident involving a motor vehicle driven by the person;

(d) Using a motor vehicle in the commission of a felony;

(e) Refusing to submit to a test or tests to determine the driver's alcohol concentration or the presence of any drug while driving a motor vehicle;

(f) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver's license is revoked, suspended, or canceled, or the driver is disqualified from operating a commercial motor vehicle;

(g) Causing a fatality through the negligent operation of a commercial motor vehicle, including but not limited to the crimes of vehicular homicide and negligent homicide.

If any of the violations set forth in this subsection occurred while transporting hazardous material, the person is disqualified for a period of not less than three years.

(2) A person is disqualified for life if it has been determined that the person has committed or has been convicted of two or more violations of any of the offenses specified in subsection (1) of this section, or any combination of those offenses, arising from two or more separate incidents.

(3) The department may adopt rules, in accordance with federal regulations, establishing guidelines, including conditions, under which a disqualification for life under subsection (2) of this section may be reduced to a period of not less than 10 years.

(4) A person is disqualified from driving a commercial motor vehicle for life who:

(a) Uses a motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by chapter 69.50 RCW, or possession with intent to manufacture, distribute, or dispense a controlled substance, as defined by chapter 69.50 RCW; or

(b) Uses a motor vehicle in the commission of any trafficking offense under RCW 9A.40.100, which offenses are deemed consistent with felonies involving severe forms of trafficking in persons as described by the federal motor carrier safety administration.

(5)(a) A person is disqualified from driving a commercial motor vehicle for a period of:

(i) Not less than 60 days if:

(A) Convicted of or found to have committed a second serious traffic violation while driving a commercial motor vehicle; or

(B) Convicted of reckless driving, where there has been a prior serious traffic violation; or

(ii) Not less than 120 days if:

(A) Convicted of or found to have committed a third or subsequent serious traffic violation while driving a commercial motor vehicle; or

(B) Convicted of reckless driving, where there has been two or more prior serious traffic violations.

(b) The disqualification period under (a)(ii) of this subsection must be in addition to any other previous period of disqualification.

(c) For purposes of determining prior serious traffic violations under this subsection, each conviction of or finding that a driver has committed a serious traffic violation while driving a commercial motor vehicle or noncommercial motor vehicle, arising from a separate incident occurring within a three-year period, must be counted.

(6) A person is disqualified from driving a commercial motor vehicle for a period of:

(a) Not less than 180 days nor more than one year if convicted of or found to have committed a first violation of an out-of-service order while driving a commercial vehicle;

(b) Not less than two years nor more than five years if, during a 10-year period, the person is convicted of or is found to have committed two violations of out-of-service orders while driving a commercial motor vehicle in separate incidents;

(c) Not less than three years nor more than five years if, during a 10-year period, the person is convicted of or is found to have committed three or more violations of out-of-service orders while driving commercial motor vehicles in separate incidents;

(d) Not less than 180 days nor more than two years if the person is convicted of or is found to have committed a first violation of an out-of-service order while transporting hazardous materials, or while operating motor vehicles designed to transport 16 or more passengers, including the driver. A person is disqualified for a period of not less than three years nor more than five years if, during a 10-year period, the person is convicted of or is found to have committed subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials, or while operating motor vehicles designed to transport ((~~sixteen~~)) 16 or more passengers, including the driver.

(7)(a) A person is disqualified from driving a commercial motor vehicle for the period of time specified in (b) of this subsection if he or she is convicted of or is found to have committed one of the following six offenses at a railroad-highway grade crossing while operating a commercial motor vehicle in violation of a federal, state, or local law or regulation:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train or other on-track equipment;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement officer at the crossing;

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(b) A person is disqualified from driving a commercial motor vehicle for a period of:

(i) Not less than 60 days if the driver is convicted of or is found to have committed a first violation of a railroad-highway grade crossing violation;

(ii) Not less than 120 days if the driver is convicted of or is found to have committed a second railroad-highway grade crossing violation in separate incidents within a three-year period;

(iii) Not less than one year if the driver is convicted of or is found to have committed a third or subsequent railroad-highway grade crossing violation in separate incidents within a three-year period.

(8) A person is disqualified from driving a commercial motor vehicle for not more than one year if a report has been received by the department from the federal motor carrier safety administration that the person's driving has been determined to constitute an imminent hazard as defined by 49 C.F.R. 383.5. A person who is simultaneously disqualified from driving a commercial motor vehicle under this subsection and under other provisions of this chapter, or under 49 C.F.R. 383.52, shall serve those disqualification periods concurrently.

(9) Within 10 days after suspending, revoking, or canceling a commercial driver's license or disqualifying a driver from operating a commercial motor vehicle, the department shall update its records to reflect that action.

**Sec.**  RCW 38.38.760 and 2009 c 378 s 24 are each amended to read as follows:

(1) Any person subject to this code who:

(a) Operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in RCW 38.38.762; or

(b) Operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit under subsection (2) of this section; or

(c) Operates or is in actual physical control of any vehicle, aircraft, or vessel in a reckless or wanton manner

shall be punished as a court-martial may direct.

(2) For purposes of subsection (1) of this section, the blood alcohol content limit with respect to alcohol concentration in a person's blood is ((~~0.08~~)) 0.06 grams of alcohol per ((~~one hundred~~)) 100 milliliters of blood and with respect to alcohol concentration in a person's breath is ((~~0.08~~)) 0.06 grams of alcohol per ((~~two hundred ten~~)) 210 liters of breath, as shown by chemical analysis.

(3) For purposes of this section, "blood alcohol content limit" means the amount of alcohol concentration in a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited.

**Sec.**  RCW 79A.60.040 and 2022 c 16 s 136 are each amended to read as follows:

(1) It is unlawful for any person to operate a vessel in a reckless manner.

(2) It is unlawful for a person to operate a vessel while under the influence of intoxicating liquor, cannabis, or any drug. A person is considered to be under the influence of intoxicating liquor, cannabis, or any drug if, within two hours of operating a vessel:

(a) The person has an alcohol concentration of ((~~0.08~~)) 0.06 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) The person has a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) The person is under the influence of or affected by intoxicating liquor, cannabis, or any drug; or

(d) The person is under the combined influence of or affected by intoxicating liquor, cannabis, and any drug.

(3) The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section.

(4)(a) Any person who operates a vessel within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of the person's breath for the purpose of determining the alcohol concentration in the person's breath if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person was operating a vessel while under the influence of intoxicating liquor or a combination of intoxicating liquor and any other drug.

(b) When an arrest results from an accident in which there has been serious bodily injury to another person or death or the arresting officer has reasonable grounds to believe the person was operating a vessel while under the influence of THC or any other drug, a blood test may be administered with the consent of the arrested person and a valid waiver of the warrant requirement or without the consent of the person so arrested pursuant to a search warrant or when exigent circumstances exist.

(c) Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood.

(d) An arresting officer may administer field sobriety tests when circumstances permit.

(5) The test or tests of breath must be administered pursuant to RCW 46.20.308. The officer shall warn the person that if the person refuses to take the test, the person will be issued a class 1 civil infraction under RCW 7.80.120.

(6) A violation of subsection (1) of this section is a misdemeanor. A violation of subsection (2) of this section is a gross misdemeanor. In addition to the statutory penalties imposed, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense.

(7) For the purposes of this subsection, "cannabis" has the meaning provided in RCW 69.50.101.

NEW SECTION. **Sec.**  A new section is added to chapter 43.59 RCW to read as follows:

The Washington traffic safety commission shall develop and implement a public information campaign related to this act. In developing and implementing the public information campaign, the commission must:

(1) Ensure television, radio, and online advertisements are provided in all areas of the state;

(2) Include multiple print advertisements in the largest newspapers in each county;

(3) Provide content of the public information campaign in the top nine most significant non-English-speaking languages spoken in the state;

(4) Consider equity outcomes on overburdened communities as defined in RCW 70A.02.010; and

(5) Ensure that at least 10 percent of the advertisements are developed in conjunction with in-state hospitality stakeholders and educate drivers about safe alternatives to driving while patronizing hospitality businesses.

NEW SECTION. **Sec.**  A new section is added to chapter 66.44 RCW to read as follows:

The legislature finds that current civil law relating to civil liability is that a licensed commercial vendor or quasi-commercial vendor owes a duty to third persons not to sell, serve, or furnish alcohol to a person who is apparently under the influence of alcohol, or who is obviously intoxicated. This current civil law is both statutory and also developed in case law. The legislature further finds that civil liability to third persons under the civil law does not depend upon a finding of the blood or breath alcohol concentration. Therefore, nothing in this act shall be construed to change current civil law for civil liability of a licensed commercial vendor or quasi-commercial vendor.

NEW SECTION. **Sec.**  A new section is added to chapter 66.08 RCW to read as follows:

(1) The Washington state institute for public policy must conduct an evaluation of the impacts of this act during the first two years of implementation. By March 1, 2027, the institute must submit a report to the appropriate committees of the legislature detailing the results of its evaluation. The evaluation must include, but is not limited to, the impact of this act on:

(a) The number of serious and fatal traffic accidents;

(b) Driving under the influence arrests and adjudications for driving under the influence offenses;

(c) Equity outcomes on overburdened communities as defined in RCW 70A.02.010;

(d) Sales and other business effects on the hospitality industry in the state; and

(e) Sales and other business effects on breweries, wineries, and distilleries in the state.

(2) This section expires November 1, 2027."

Renumber the remaining sections consecutively and correct any internal references accordingly.

On page 78, line 17, after "46.61.5055," strike "and 46.61.504" and insert "46.61.504, 46.61.506, 46.20.308, 46.20.3101, 46.25.090, 38.38.760, and 79A.60.040"

On page 78, line 18, after "10.05 RCW;" insert "adding a new section to chapter 43.59 RCW; adding a new section to chapter 66.44 RCW; adding a new section to chapter 66.08 RCW;"

On page 78, line 19, after "date;" insert "providing an expiration date;"

EFFECT: (1) Reduces the breath or blood alcohol concentration limit for operating a motor vehicle from 0.08 to 0.06.

(2) Reduces the breath or blood alcohol concentration limit for physical control of a motor vehicle from 0.08 to 0.06.

(3) Requires the Washington Traffic Safety Commission to develop and implement a public information campaign related to the act.

(4) Provides legislative findings regarding the unchanged civil liability for licensed commercial vendors or quasi-commercial vendors who owe a duty to third persons not to sell, serve, or furnish alcohol to a person who is apparently under the influence of alcohol, or who is obviously intoxicated.

(5) Requires the Washington State Institute for Public Policy to conduct an evaluation of the impacts of the act during the first two years by March 1, 2027.