

2 SSB 5069 - H COMM AMD
3 By Committee on Judiciary

4
5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 46.61.502 and 1987 c 373 s 2 are each amended to read
8 as follows:

9 (1) A person is guilty of driving while under the influence of
10 intoxicating liquor or any drug if the person drives a vehicle within
11 this state while:

12 ((1)) (a) The person has (~~0.10 grams or more of alcohol per two~~
13 ~~hundred ten liters of breath~~) alcohol in his or her breath at or above
14 the alcohol concentration standard defined in subsection (2) of this
15 section, as shown by analysis of the person's breath made under RCW
16 46.61.506; or

17 ((2)) (b) The person has (~~0.10 percent or more by weight of~~
18 ~~alcohol in the person's blood~~) alcohol in his or her blood at or above
19 the alcohol concentration standard defined in subsection (2) of this
20 section as shown by analysis of the person's blood made under RCW
21 46.61.506; or

22 ((3)) (c) The person is under the influence of or affected by
23 intoxicating liquor or any drug; or

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

26 (2) "Alcohol concentration standard" means:

27 (a) For a person under the age of twenty-one years:

1 (i) Any amount more than 0.04 grams of alcohol per two hundred ten
2 liters of breath; or

3 (ii) Any more than 0.04 percent by weight of alcohol in the blood;
4 and

5 (b) For a person age twenty-one years or older:

6 (i) 0.10 grams of alcohol per two hundred ten liters of breath; or

7 (ii) 0.10 percent by weight of alcohol in the blood.

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

12 "**Sec. 2.** RCW 46.61.504 and 1987 c 373 s 3 are each amended to read
13 as follows:

14 (1) A person is guilty of being in actual physical control of a
15 motor vehicle while under the influence of intoxicating liquor or any
16 drug if the person has actual physical control of a vehicle within this
17 state while:

18 ~~((1))~~ (a) The person has ((0.10 grams or more of alcohol per two
19 hundred ten liters of breath)) alcohol in his or her breath at or above
20 the alcohol concentration standard defined in RCW 46.61.502, as shown
21 by analysis of the person's breath made under RCW 46.61.506; or

22 ~~((2))~~ (b) The person has ((0.10 percent or more by weight of
23 alcohol in the person's blood)) alcohol in his or her blood at or above
24 the alcohol concentration standard defined in RCW 46.61.502, as shown
25 by analysis of the person's blood made under RCW 46.61.506; or

26 ~~((3))~~ (c) The person is under the influence of or affected by
27 intoxicating liquor or any drug; or

28 ~~((4))~~ (d) The person is under the combined influence of or
29 affected by intoxicating liquor and any drug.

1 (2) The fact that any person charged with a violation of this
2 section is or has been entitled to use such drug under the laws of this
3 state shall not constitute a defense against any charge of violating
4 this section. No person may be convicted under this section if, prior
5 to being pursued by a law enforcement officer, the person has moved the
6 vehicle safely off the roadway."

7 **"Sec. 3.** RCW 46.61.506 and 1987 c 373 s 4 are each amended to read
8 as follows:

9 (1) Upon the trial of any civil or criminal action or proceeding
10 arising out of acts alleged to have been committed by any person while
11 driving or in actual physical control of a vehicle while under the
12 influence of intoxicating liquor or any drug, if the amount of alcohol
13 in the person's blood or breath at the time alleged as shown by
14 analysis of his blood or breath is less than (~~0.10 percent by weight~~
15 ~~of alcohol in his blood or 0.10 grams of alcohol per two hundred ten~~
16 ~~liters of the person's breath~~)) the alcohol concentration standard
17 defined in RCW 46.61.502, it is evidence that may be considered with
18 other competent evidence in determining whether the person was under
19 the influence of intoxicating liquor or any drug.

20 (2) The breath analysis shall be based upon grams of alcohol per
21 two hundred ten liters of breath. The foregoing provisions of this
22 section shall not be construed as limiting the introduction of any
23 other competent evidence bearing upon the question whether the person
24 was under the influence of intoxicating liquor or any drug.

25 (3) Analysis of the person's blood or breath to be considered valid
26 under the provisions of this section or RCW 46.61.502 or 46.61.504
27 shall have been performed according to methods approved by the state
28 toxicologist and by an individual possessing a valid permit issued by
29 the state toxicologist for this purpose. The state toxicologist is

1 directed to approve satisfactory techniques or methods, to supervise
2 the examination of individuals to ascertain their qualifications and
3 competence to conduct such analyses, and to issue permits which shall
4 be subject to termination or revocation at the discretion of the state
5 toxicologist.

6 (4) When a blood test is administered under the provisions of RCW
7 46.20.308, the withdrawal of blood for the purpose of determining its
8 alcoholic content may be performed only by a physician, a registered
9 nurse, or a qualified technician. This limitation shall not apply to
10 the taking of breath specimens.

11 (5) The person tested may have a physician, or a qualified
12 technician, chemist, registered nurse, or other qualified person of his
13 own choosing administer one or more tests in addition to any
14 administered at the direction of a law enforcement officer. The
15 failure or inability to obtain an additional test by a person shall not
16 preclude the admission of evidence relating to the test or tests taken
17 at the direction of a law enforcement officer.

18 (6) Upon the request of the person who shall submit to a test or
19 tests at the request of a law enforcement officer, full information
20 concerning the test or tests shall be made available to him or his
21 attorney."

22 "Sec. 4. RCW 9.41.098 and 1989 c 222 s 8 are each amended to read
23 as follows:

24 (1) The superior courts and the courts of limited jurisdiction of
25 the state may order forfeiture of a firearm which is proven to be:

26 (a) Found concealed on a person not authorized by RCW 9.41.060 or
27 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute
28 defense to forfeiture if the person possessed a valid Washington
29 concealed pistol license within the preceding two years and has not

1 become ineligible for a concealed pistol license in the interim. Before
2 the firearm may be returned, the person must pay the past due renewal
3 fee and the current renewal fee;

4 (b) Commercially sold to any person without an application as
5 required by RCW 9.41.090;

6 (c) Found in the possession or under the control of a person at the
7 time the person committed or was arrested for committing a crime of
8 violence or a crime in which a firearm was used or displayed or a
9 felony violation of the uniform controlled substances act, chapter
10 69.50 RCW;

11 (d) Found concealed on a person who is in any place in which a
12 concealed pistol license is required, and who is under the influence of
13 any drug or under the influence of intoxicating liquor, having ~~((0.10
14 grams or more of alcohol per two hundred ten liters of breath or 0.10
15 percent or more by weight of alcohol in the person's blood))~~ alcohol in
16 his or her breath or blood at or above the alcohol concentration
17 standard defined in RCW 46.61.502, as shown by analysis of the person's
18 breath, blood, or other bodily substance;

19 (e) Found in the possession of a person prohibited from possessing
20 the firearm under RCW 9.41.040;

21 (f) Found in the possession of a person free on bail or personal
22 recognizance pending trial, appeal, or sentencing for a crime of
23 violence or a crime in which a firearm was used or displayed, except
24 that violations of Title 77 RCW shall not result in forfeiture under
25 this section;

26 (g) Found in the possession of a person found to have been mentally
27 incompetent while in possession of a firearm when apprehended or who is
28 thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

1 (h) Known to have been used or displayed by a person in the
2 violation of a proper written order of a court of general jurisdiction;
3 or

4 (i) Known to have been used in the commission of a crime of
5 violence or a crime in which a firearm was used or displayed or a
6 felony violation of the uniformed controlled substances act, chapter
7 69.50 RCW.

8 (2) Upon order of forfeiture, the court in its discretion shall
9 order destruction of any firearm that is illegal for any person to
10 possess. All firearms legal for citizen possession that are judicially
11 forfeited or forfeited due to failure to make a claim under RCW
12 63.32.010, 63.40.010, or 63.35.020 shall be submitted for auction to
13 commercial sellers once a year if the submitting agency has accumulated
14 at least ten firearms authorized for sale. Law enforcement agencies
15 may conduct joint auctions for the purpose of maximizing efficiency.
16 A maximum of ten percent of such firearms may be retained for use by
17 local law enforcement agencies and the Washington state patrol. Before
18 submission for auction, a court may temporarily retain forfeited
19 firearms if needed for evidence. The proceeds from any sale shall be
20 divided as follows: The local jurisdiction and the Washington state
21 patrol shall retain its costs, including actual costs of storage and
22 sale, and shall forward the remainder to the state department of
23 wildlife for use in its firearms training program pursuant to RCW
24 77.32.155.

25 If a firearm is delivered to a law enforcement agency and the
26 agency no longer requires use of the firearm, the agency shall dispose
27 of the firearm by auction as provided by this subsection. The public
28 auctioning agency shall, as a minimum, maintain a record of all
29 forfeited firearms by manufacturer, model, caliber, serial number, date

1 and circumstances of forfeiture, and final disposition. The records
2 shall be open to public inspection and copying.

3 (3) The court shall order the firearm returned to the owner upon a
4 showing that there is no probable cause to believe a violation of
5 subsection (1) of this section existed or the firearm was stolen from
6 the owner or the owner neither had knowledge of nor consented to the
7 act or omission involving the firearm which resulted in its forfeiture.

8 (4) A law enforcement officer of the state or of any county or
9 municipality may confiscate a firearm found to be in the possession of
10 a person under circumstances specified in subsection (1) of this
11 section. After confiscation, the firearm shall not be surrendered
12 except: (a) To the prosecuting attorney for use in subsequent legal
13 proceedings; (b) for disposition according to an order of a court
14 having jurisdiction as provided in subsection (1) of this section; or
15 (c) to the owner if the proceedings are dismissed or as directed in
16 subsection (3) of this section."

17 "Sec. 5. RCW 88.02.095 and 1990 c 231 s 3 & 1990 c 31 s 1 are each
18 reenacted and amended to read as follows:

19 (1) It shall be unlawful for any person to operate a vessel in a
20 negligent manner. For the purpose of this section, to "operate in a
21 negligent manner" shall be construed to mean the operation of a vessel
22 in such manner as to endanger or be likely to endanger any persons or
23 property or to operate at a rate of speed greater than will permit the
24 operator in the exercise of reasonable care to bring the vessel to a
25 safe stop.

26 (2) A person is guilty of operating a vessel while under the
27 influence of intoxicating liquor or any drug if the person operates a
28 vessel within this state while:

1 (a) The person has (~~0.10 grams or more of alcohol per two hundred~~
2 ~~ten liters of breath~~) alcohol in his or her breath at or above the
3 alcohol concentration standard defined in RCW 46.61.502, as shown by
4 analysis of the person's breath made under RCW 46.61.506; or

5 (b) The person has (~~0.10 percent or more by weight of alcohol in~~
6 ~~the person's blood~~) alcohol in his or her blood at or above the
7 alcohol concentration standard defined in RCW 46.61.502, as shown by
8 analysis of the person's blood made under RCW 46.61.506; or

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

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

13 The fact that any person charged with a violation of this section
14 is or has been entitled to use such drug under the laws of this state
15 shall not constitute a defense against any charge of violating this
16 section. A person cited under this subsection may upon request be
17 given a breath test for breath alcohol or may request to have a blood
18 sample taken for blood alcohol analysis. An arresting officer shall
19 administer field sobriety tests when circumstances permit.

20 (3) For the purposes of this section, "vessel" means any watercraft
21 used or capable of being used as a means of transportation on the
22 water, other than a seaplane.

23 (4) For the purpose of this section, "vessel operator" means a
24 person who is in actual physical control of a vessel.

25 (5) A violation of this section is a misdemeanor, punishable by up
26 to ninety days in jail and by a fine of not more than one thousand
27 dollars. In addition, the court may order the defendant to pay
28 restitution for any damages or injuries resulting from the offense."

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4 On page 1, line 3 of the title, after "one;" strike the remainder
5 of the title and insert "amending RCW 46.61.502, 46.61.504, 46.61.506,
6 and 9.41.098; and reenacting and amending RCW 88.02.095."