

2 **SB 5245 - H COMM AMD ADOPTED 4-15-93**

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) And the person has 0.10 grams or more of alcohol per
13 two hundred ten liters of breath within two hours after driving, as
14 shown by analysis of the person's breath made under RCW 46.61.506; or

15 (~~(2)~~) (b) And the person has 0.10 percent or more by weight of
16 alcohol in the person's blood within two hours after driving, as shown
17 by analysis of the person's blood made under RCW 46.61.506; or

18 (~~(3)~~) (c) While the person is under the influence of or affected
19 by intoxicating liquor or any drug; or

20 (~~(4)~~) (d) While the person is under the combined influence of or
21 affected by intoxicating liquor and any drug.

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

26 (3) It is an affirmative defense to a violation of subsection (1)
27 (a) and (b) of this section which the defendant must prove by a
28 preponderance of the evidence that the defendant consumed a sufficient
29 quantity of alcohol after the time of driving and before the
30 administration of an analysis of the person's breath or blood to cause
31 the defendant's alcohol concentration to be 0.10 or more within two
32 hours after driving. The court shall not admit evidence of this
33 defense unless the defendant notifies the prosecution prior to the
34 omnibus or pretrial hearing in the case of the defendant's intent to
35 assert the affirmative defense.

1 (4) Analyses of blood or breath samples obtained more than two
2 hours after the alleged driving may be used as evidence that within two
3 hours of the alleged driving, a person had 0.10 grams or more of
4 alcohol per two hundred ten liters of breath or 0.10 percent or more of
5 alcohol in the person's blood, pursuant to subsection (1) (a) and (b)
6 of this section, and may be used as evidence that a person was under
7 the influence of or affected by intoxicating liquors or any drug
8 pursuant to subsection (1) (c) and (d) of this section.

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

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

15 ((+1)) (a) And the person has 0.10 grams or more of alcohol per
16 two hundred ten liters of breath within two hours after being in actual
17 physical control of a motor vehicle, as shown by analysis of the
18 person's breath made under RCW 46.61.506; or

19 ((+2)) (b) And the person has 0.10 percent or more by weight of
20 alcohol in the person's blood within two hours after being in actual
21 physical control of a motor vehicle, as shown by analysis of the
22 person's blood made under RCW 46.61.506; or

23 ((+3)) (c) While the person is under the influence of or affected
24 by intoxicating liquor or any drug; or

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

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

33 (3) It is an affirmative defense to a violation of subsection (1)
34 (a) and (b) of this section which the defendant must prove by a
35 preponderance of the evidence that the defendant consumed a sufficient
36 quantity of alcohol after the time of being in actual physical control
37 of a motor vehicle and before the administration of an analysis of the
38 person's breath or blood to cause the defendant's alcohol concentration

1 to be 0.10 or more within two hours after being in actual physical
2 control of a motor vehicle. The court shall not admit evidence of this
3 defense unless the defendant notifies the prosecution prior to the
4 omnibus or pretrial hearing in the case of the defendant's intent to
5 assert the affirmative defense.

6 (4) Analyses of blood or breath samples obtained more than two
7 hours after the alleged actual physical control of a motor vehicle may
8 be used as evidence that within two hours of the alleged actual
9 physical control of a motor vehicle, a person had 0.10 grams or more of
10 alcohol per two hundred ten liters of breath or 0.10 percent or more of
11 alcohol in the person's blood, pursuant to subsection (1) (a) and (b)
12 of this section, and may be used as evidence that a person was under
13 the influence of or affected by intoxicating liquors or any drug
14 pursuant to subsection (1) (c) and (d) of this section."

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