

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5289

Chapter 334, Laws of 2017
(partial veto)

65th Legislature
2017 Regular Session

DISTRACTED DRIVING--ELECTRONIC DEVICES--DANGEROUSLY DISTRACTED
DRIVING

EFFECTIVE DATE: 7/23/2017

Passed by the Senate April 19, 2017
Yeas 39 Nays 10

CYRUS HABIB

President of the Senate

Passed by the House April 19, 2017
Yeas 61 Nays 36

FRANK CHOPP

Speaker of the House of Representatives

Approved May 16, 2017 3:42 PM with the
exception of Section 5, which is
vetoed.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of
the Senate of the State of
Washington, do hereby certify that
the attached is **SUBSTITUTE SENATE
BILL 5289** as passed by Senate and
the House of Representatives on the
dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

May 17, 2017

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5289

AS AMENDED BY THE HOUSE

Passed Legislature - 2017 Regular Session

State of Washington 65th Legislature 2017 Regular Session

By Senate Transportation (originally sponsored by Senators Rivers, Llias, Miloscia, Carlyle, and Kuderer)

READ FIRST TIME 02/23/17.

1 AN ACT Relating to updating the distracted driving infraction;
2 amending RCW 46.25.010; adding new sections to chapter 46.61 RCW;
3 repealing RCW 46.61.667 and 46.61.668; prescribing penalties; and
4 providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

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

17 (c) An individual employed as a commercial motor vehicle driver
18 who uses a personal electronic device within the scope of such
19 individual's employment if such use is permitted under 49 U.S.C. Sec.
20 31136 as it existed on the effective date of this section; and

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

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

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

9 (5) For purposes of this section:

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

16 (b) "Personal electronic device" means any portable electronic
17 device that is capable of wireless communication or electronic data
18 retrieval and is not manufactured primarily for hands-free use in a
19 motor vehicle. "Personal electronic device" includes, but is not
20 limited to, a cell phone, tablet, laptop, two-way messaging device,
21 or electronic game. "Personal electronic device" does not include
22 two-way radio, citizens band radio, or amateur radio equipment.

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

24 (i) Holding a personal electronic device in either hand or both
25 hands;

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

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

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

34 (1) RCW 46.61.667 (Using a wireless communications device or
35 handheld mobile telephone while driving) and 2013 c 224 s 15, 2010 c
36 223 s 3, & 2007 c 417 s 2; and

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

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 a
5 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 violation
9 of a separate traffic infraction or an equivalent local ordinance.

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

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

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

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

26 The definitions set forth in this section apply throughout this
27 chapter.

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

31 (2) "Alcohol concentration" means:

32 (a) The number of grams of alcohol per one hundred milliliters of
33 blood; or

34 (b) The number of grams of alcohol per two hundred ten liters of
35 breath.

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

1 (4) The "commercial driver's license information system" (CDLIS)
2 is the information system established pursuant to 49 U.S.C. Sec.
3 31309 to serve as a clearinghouse for locating information related to
4 the licensing and identification of commercial motor vehicle drivers.

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

7 (6) "Commercial motor vehicle" means a motor vehicle or
8 combination of motor vehicles used in commerce to transport
9 passengers or property if the motor vehicle:

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

15 (b) Has a gross vehicle weight rating or gross vehicle weight of
16 11,794 kilograms or more (26,001 pounds or more), whichever is
17 greater; or

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

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

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

23 (7) "Conviction" means an unvacated adjudication of guilt, or a
24 determination that a person has violated or failed to comply with the
25 law in a court of original jurisdiction or by an authorized
26 administrative tribunal, an unvacated forfeiture of bail or
27 collateral deposited to secure the person's appearance in court, a
28 plea of guilty or nolo contendere accepted by the court, the payment
29 of a fine or court cost, entry into a deferred prosecution program
30 under chapter 10.05 RCW, or violation of a condition of release
31 without bail, regardless of whether or not the penalty is rebated,
32 suspended, or probated.

33 (8) "Disqualification" means a prohibition against driving a
34 commercial motor vehicle.

35 (9) "Drive" means to drive, operate, or be in physical control of
36 a motor vehicle in any place open to the general public for purposes
37 of vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and
38 46.25.120, "drive" includes operation or physical control of a motor
39 vehicle anywhere in the state.

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

4 (11) "Employer" means any person, including the United States, a
5 state, or a political subdivision of a state, who owns or leases a
6 commercial motor vehicle, or assigns a person to drive a commercial
7 motor vehicle.

8 (12) "Gross vehicle weight rating" (GVWR) means the value
9 specified by the manufacturer as the maximum loaded weight of a
10 single vehicle. The GVWR of a combination or articulated vehicle,
11 commonly referred to as the "gross combined weight rating" or GCWR,
12 is the GVWR of the power unit plus the GVWR of the towed unit or
13 units. If the GVWR of any unit cannot be determined, the actual gross
14 weight will be used. If a vehicle with a GVWR of less than 11,794
15 kilograms (26,001 pounds or less) has been structurally modified to
16 carry a heavier load, then the actual gross weight capacity of the
17 modified vehicle, as determined by RCW 46.44.041 and 46.44.042, will
18 be used as the GVWR.

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

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

28 (15) "Out-of-service order" means a declaration by an authorized
29 enforcement officer of a federal, state, Canadian, Mexican, or local
30 jurisdiction that a driver, a commercial motor vehicle, or a motor
31 carrier operation is out-of-service pursuant to 49 C.F.R. Secs.
32 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North
33 American uniform out-of-service criteria.

34 (16) "Positive alcohol confirmation test" means an alcohol
35 confirmation test that:

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

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

39 A report that a person has refused an alcohol test, under
40 circumstances that constitute the refusal of an alcohol test under 49

1 C.F.R. Part 40, will be considered equivalent to a report of a
2 positive alcohol confirmation test for the purposes of this chapter.

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

7 (18) "Serious traffic violation" means:

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

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

11 (c) Driving while using a (~~handheld wireless communications~~
12 ~~device [handheld mobile telephone], defined as a violation of RCW~~
13 ~~46.61.667(1)(b)) personal electronic device, defined as a violation
14 of section 1 of this act, which includes in the activities it
15 prohibits driving while holding a personal electronic device in
16 either or both hands and using a hand or finger for texting, or an
17 equivalent administrative rule or local law, ordinance, rule, or
18 resolution;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (23) "United States" means the fifty states and the District of
9 Columbia.

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

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

16 (b) Has undergone review and final determination by a medical
17 review officer.

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

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

****Sec. 5 was vetoed. See message at end of chapter.***

Passed by the Senate April 19, 2017.

Passed by the House April 19, 2017.

Approved by the Governor May 16, 2017, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 17, 2017.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 5,
Substitute Senate Bill No. 5289 entitled:

"AN ACT Relating to updating the distracted driving infraction."

The bill creates a new traffic infraction that prohibits a person
from using a personal electronic device while driving a motor vehicle
on a public highway. Section 5 creates a delayed implementation date
of January 1, 2019. I am vetoing this section because public safety
is better served by implementing this bill this year.

For these reasons I have vetoed Section 5 of Substitute Senate Bill
No. 5289.

With the exception of Section 5, Substitute Senate Bill No. 5289 is approved."

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