

SENATE BILL REPORT

SB 5067

As Reported by Senate Committee On:
Law & Justice, January 16, 2025
Transportation, February 25, 2025

Title: An act relating to impaired driving.

Brief Description: Concerning impaired driving.

Sponsors: Senators Lovick, McCune, Dhingra, Liias, Nobles, Orwall, Pedersen, Valdez and Wellman; by request of Washington Traffic Safety Commission.

Brief History:

Committee Activity: Law & Justice: 1/14/25, 1/16/25 [DPS-TRAN, DNP, w/oRec].
Transportation: 1/30/25, 2/25/25 [DPS (LAW), DNP, w/oRec].

Brief Summary of First Substitute Bill

- Decreases the blood or breath alcohol concentration limit for operating a vehicle or watercraft from 0.08 to 0.05.
- Establishes a public interest campaign to inform the public of the change to the driving under the influence laws.
- Requires the Washington Institute of Public Policy to evaluate the impacts of the change to the driving under the influence laws.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5067 be substituted therefor, and the substitute bill do pass and be referred to Committee on Transportation.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Lovick, Salomon and Valdez.

Minority Report: Do not pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senator Fortunato.

Minority Report: That it be referred without recommendation.

Signed by Senators Holy, Ranking Member; Torres and Wagoner.

Staff: Joe McKittrick (786-7287)

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Substitute Senate Bill No. 5067 as recommended by Committee on Law & Justice be substituted therefor, and the substitute bill do pass.

Signed by Senators Lias, Chair; Lovick, Vice Chair; Ramos, Vice Chair; Goehner, Assistant Ranking Member; Alvarado, Cortes, Lovelett, Nobles, Shewmake, Valdez and Wilson, J..

Minority Report: Do not pass.

Signed by Senators Chapman, Christian, Fortunato and Holy.

Minority Report: That it be referred without recommendation.

Signed by Senators King, Ranking Member; Harris, Krishnadasan and MacEwen.

Staff: Bryon Moore (786-7726)

Background: Impaired Driving. A person commits the crime of driving under the influence of intoxicating liquor, cannabis, or any drug (DUI) if the person drives a motor vehicle:

- with a blood or breath alcohol concentration (BAC) of 0.08 or higher;
- with a THC concentration of 5.00 or higher; or
- while under the influence or a combined influence of intoxicating liquor, cannabis, or any drug.

A person commits the crime of being in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle and the person has, within two hours of being in physical control of the vehicle, a BAC of 0.08 or higher, or the person has, within two hours of being in physical control of the vehicle, a THC concentration of 5.00 or higher.

Both DUI and physical control while under the influence are gross misdemeanor crimes if the person convicted has fewer than three prior DUI or physical control convictions within seven years. Upon a third or subsequent conviction for DUI or physical control within ten years, the crimes are elevated to felony offenses.

A person commits the crime of operating a vessel, or watercraft, under the influence of intoxicating liquor if, within two hours of operating a vessel, the person has a blood or

breath alcohol concentration of 0.08 or higher. Operating a vessel under the influence is a gross misdemeanor crime.

Alcoholic Beverage Control Act. Under the Alcoholic Beverage Control Act, no person is permitted to sell any liquor to any person apparently under the influence of liquor. In *Barret v. Lucky Seven Saloon, Inc.* the Washington State Supreme Court held the relevant portion of this act, defines the minimum standard of conduct for commercial vendors of alcoholic beverages when serving their customers, and is the basis for determining the civil liability of that vendor for injuries to third persons caused by an intoxicated driver.

Summary of Bill (First Substitute): Impaired Driving. The blood alcohol concentration limit of 0.08 is reduced to 0.05 for a person to be found guilty of:

- driving under the influence of liquor;
- actual physical control of a vehicle while under the influence of liquor; and
- operating a vessel under the influence of liquor.

Public Information Campaign. The Washington Traffic Safety Commission (WTSC) must develop and implement a public information campaign related to the reduction of permissible BAC. In developing the campaign, WTSC must:

- ensure television, radio, and online advertisements are provided in all areas of the state;
- include multiple print advertisements in the largest newspapers in each county;
- provide content of the public information campaign in the top nine most significant non-English languages spoken in the state;
- consider equity outcomes on overburdened communities; and
- 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.

Alcoholic Beverage Control Act. 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 developed through caselaw; and
- civil liability to third persons under the civil law does not depend on a finding of the blood or breath concentrations.

Nothing in this act may be construed to change current civil law related to the civil liability of a licensed commercial vendor or quasi-commercial vendor.

Evaluation of the Act. 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, 2029, 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:

- the number of serious and fatal traffic crashes;
- driving under the influence arrests and adjudications for driving under the influence offenses;
- equity outcomes on overburdened communities;
- sales and other business effects on the hospitality industry in the state; and
- sales and other business effects on breweries, wineries, and distilleries in the state.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on July 1, 2026.

Staff Summary of Public Testimony on First Substitute (Law & Justice): PRO: This legislation is about community safety. The people of Washington should not only be safe but should feel safe as well. Our roads are not as safe as they once were, and are not as safe as they should be. Drunk drivers have made our communities unsafe. In 2023, there were 813 traffic deaths on our roads, 416 of those deaths were DUI related. Drunk driving is a choice, and every drunk driving accident is preventable. This legislation will save lives. Seventy-five percent of nations around the world have BAC limits of 0.05 or lower. The law should reflect the scientific fact that humans' ability to drive is affected at this lower BAC. Driving is a divided attention skill, and at a BAC of 0.05 drivers have difficulty responding to emergency situations. This bill will not result in more arrests because law enforcement will continue to arrest individuals who exhibit signs of impairment. This would make Washington the second state to enact legislation that will save lives and cut the number of senseless and avoidable accidents. Driving is one of the most dangerous activities people do in their daily lives, and alcohol related driving continues to exacerbate that danger. This bill is a proven lifesaving measure to make our roads safer. Most impaired driving accidents involving fatalities also involve individuals while BAC levels much higher than the current BAC limit of 0.08. Over the last year, there were over 600 intrusions into work zones by drivers in Washington. Workers on the state's highways are particularly vulnerable to the negative effects of drunk driving. The law should reflect the fact that people should not get behind the wheel of a car after drinking alcohol. It is dangerous to drive with a BAC of 0.05. The families of those killed by drunk drivers are forced to serve life sentences for crimes they did not commit. This is a public health issue, and science tells us nearly all people are affected by alcohol at the 0.05 level. This will not only reduce the number of DUI cases in Washington, but it will also encourage safe alcohol consumption.

CON: This bill will impact drivers who are not impaired. This will affect individuals who decide to stop drinking before they are impaired. In Utah, the only state with a 0.05 limit,

traffic accidents have gone up since the state lowered the permissible BAC. Only increasing the certainty that drunk drivers will be punished will make our roads safer. Lowering the BAC fails to address the core issue of high BAC drivers and repeat offenders. This bill is not an effective tactic to address the issue of impaired driving.

OTHER: Prior to the implementation of the 0.08 BAC limit, prosecutors were required to prove drivers were actually impaired in order to secure a conviction for driving under the influence. Reducing the limit to 0.05 creates a disconnect between the crime of being under the influence and the per se limit of 0.05 because not all people will exhibit the signs of being under the influence at that level. Other states have crimes related to driving with a BAC under 0.08, but those states acknowledge the lesser culpability of individuals with lesser blood alcohol content. The legislature should consider a two-tiered system that reflects the culpability of those individuals with a lower blood alcohol content.

Persons Testifying (Law & Justice): PRO: Senator John Lovick, Prime Sponsor; James McMahan, WA Assoc Sheriffs & Police Chiefs; Mark McKechnie, Washington Traffic Safety Commission; Deion Glover, Washington State Patrol; Amy Freedheim, King County Prosecuting Attorneys Office; Tom Chapman, National Transportation Safety Board ; Alaina Dahlquist, National Safety Council; Omar Masood, Advocates for Highway & Auto Safety; Linda Thompson, Washington Association for Substance misuse and Violence Prevention (WASAVP); Candace Reid , Mothers Against Drunk Driving ; Ashley Bonus; Billy Wallace, Washington & Northern Idaho District Council of Laborers; Tao Sheng Kwan-Gett, Washington Department of Health; Zachary Cyr; Dakota Manley, Washington State Young Republicans.

CON: Julia Gorton, Washington Hospitality Association; Josh McDonald, Washington Wine Institute; Daniel Olson, Washington Brewers Guild.

OTHER: Jason Lantz, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on First Substitute (Transportation): PRO: This bill is about public safety. The roads in Washington State are not as safe as they once were, and they are not as safe as they should be. Drunk driving is a choice. The significant number of deaths and injuries the state is experiencing are preventable. This bill is a much needed step toward creating a safe driving culture in Washington State. There is an epidemic in traffic safety and the fiscal cost on society is enormous. Far too many people have suffered the tragic consequences of people making bad choices to drive impaired. The impact of DUI is to shatter lives of the victims.

Many maintenance workers are subject to the chaos on our roads, and this bill is another step to make sure workers get home safely. The drivers with any BAC have impairment including distraction and reduced response time. Many other countries around the world

have the 0.05 BAC standard and this bill will allow us to join the other countries. The change to 0.05 does not mean that law enforcement will change their practices or procedures, but this bill will present an opportunity to educate the public about impairment. The experience in other countries and in Utah demonstrate impaired driving with individuals at all BACs will come down. This will result in savings to taxpayers, but will more importantly save lives. Key findings from Utah shows that this did not result in decreased consumption, but that it does result in reduced impaired driving.

This does not result in increased arrest and criminal justice costs, but it does make us safer. Restaurants, breweries, and wineries have not suffered revenue losses from the change in Utah. The value in this change is that it sends the public a message. Training and procedures do not change under this bill, but it reinforces the notion that no level of alcohol is acceptable. Making public safety progress is about passing a law, but then following it up with engagement with the public about the impact of impairment on their bodies and their cognitive abilities. People at 0.05 BAC are twice as likely to be involved in fatal accidents. This does not change the civil liability of a server of alcohol. Impairment starts at the first drink. This is a bold step in improving traffic safety.

CON: The change to 0.05 BAC impacts drivers that are not impaired. As a result, this would subject people to strict penalties without really making us safer. The problem of impaired driving is primarily caused by people with high BAC levels and repeat offenders. The bill increases the penalties for drivers that are not the primary reason for drug involved road fatalities. This bill will not have meaningful impact on public safety since it doesn't target the right people. Besides high BAC drivers, the population of multiple drug impaired drivers would be a better area to focus on. The experience in Utah shows that this is not effective because their fatalities are now increasing faster than many other states. This doesn't really address the dangerous offenders on the roadway. People at 0.05 don't show the normal signs of impairment and this will put servers in an impossible situation. As a result, the liability for servers will increase.

OTHER: 0.05 BAC is the level at which judgement, response time, and other aspects of being able to safely drive are impacted. In the State Patrol, we don't just arrest people, but the agency is really about educating the public about safe driving behaviors. The 0.05 change does not impact the way we look for impairment, but the enforcement aspect is about removing drivers that are affected by alcohol and other drugs.

Persons Testifying (Transportation): PRO: Senator John Lovick, Prime Sponsor; Amy Freedheim, Senior Deputy Prosecutor King County - Felony Traffic; Candace Reid, Mothers Against Drunk Driving; Dakota Manley, Washington State Young Republicans; Cammryn Gadd; James McMahan, WA Assoc Sheriffs & Police Chiefs; Omar Masood, Advocates for Highway & Auto Safety; Eleanor Nguyen, Not official representative, but coming from Lake Washington High School AP Government class; Shellie Coury; Dale Panattoni; Mark McKechnie, Washington Traffic Safety Commission; Scott Waller, WASAVP - Washington Association for Substance misuse and Violence Prevention;

Ashley Bonus, 94-2707273; Mallorie Davies, District Council Of Washington and N. Idaho Laborers; Leah Walton, National Transportation Safety Board.

CON: Julia Gorton, Washington Hospitality Association; Daniel Olsen, Washington Brewers Guild; Josh McDonald, Washington Wine Institute; Emily Bourne, Server.

OTHER: Deion Glover, Washington State Patrol.

Persons Signed In To Testify But Not Testifying (Transportation): No one.