

**RCW 5.40.060 Defense to personal injury or wrongful death action**

**—Intoxicating liquor or any drug.** (1) Except as provided in subsection (2) of this section, it is a complete defense to an action for damages for personal injury or wrongful death that the person injured or killed was under the influence of intoxicating liquor or any drug at the time of the occurrence causing the injury or death and that such condition was a proximate cause of the injury or death and the trier of fact finds such person to have been more than fifty percent at fault. The standard for determining whether a person was under the influence of intoxicating liquor or drugs shall be the same standard established for criminal convictions under RCW 46.61.502, and evidence that a person was under the influence of intoxicating liquor or drugs under the standard established by RCW 46.61.502 shall be conclusive proof that such person was under the influence of intoxicating liquor or drugs.

(2) In an action for damages for personal injury or wrongful death that is brought against the driver of a motor vehicle who was under the influence of intoxicating liquor or any drug at the time of the occurrence causing the injury or death and whose condition was a proximate cause of the injury or death, subsection (1) of this section does not create a defense against the action notwithstanding that the person injured or killed was also under the influence so long as such person's condition was not a proximate cause of the occurrence causing the injury or death. [1994 c 275 § 30; 1987 c 212 § 1001; 1986 c 305 § 902.]

**Retroactive application—1994 c 275 § 30:** "Section 30 of this act is remedial in nature and shall apply retroactively." [1994 c 275 § 31.]

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.

**Preamble—Report to legislature—Applicability—Severability—1986 c 305:** See notes following RCW 4.16.160.