

E2SHB 3254 - S AMD TO TRAN COMM AMD (S-5957.1/08) **270**
By Senators Brandland, Fairley, Hargrove, and Kline

ADOPTED 03/07/2008

1 Beginning on page 28, line 37 of the amendment, strike all of
2 subsection (4) and insert the following:

3 "(4) A person who is convicted of a violation of RCW 46.61.502 or
4 46.61.504 (~~and who~~) shall be punished under chapter 9.94A RCW if:
5 (a) The person has four or more prior offenses within ten years(~~);~~
6 or (~~who~~) (b) the person has ever previously been convicted of: (i)
7 A violation of RCW 46.61.520 committed while under the influence of
8 intoxicating liquor or any drug (~~or~~); (ii) a violation of RCW
9 46.61.522 committed while under the influence of intoxicating liquor or
10 any drug(~~, shall be punished in accordance with chapter 9.94A RCW);~~
11 or (iii) an out-of-state offense comparable to the offense specified in
12 (b)(i) or (ii) of this subsection."

13 On page 34, after line 7 of the amendment, insert the following:

14 "**Sec. 15.** RCW 46.61.502 and 2006 c 73 s 1 are each amended to read
15 as follows:

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

19 (a) And the person has, within two hours after driving, an alcohol
20 concentration of 0.08 or higher as shown by analysis of the person's
21 breath or blood made under RCW 46.61.506; or

22 (b) While the person is under the influence of or affected by
23 intoxicating liquor or any drug; or

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

26 (2) The fact that a person charged with a violation of this section
27 is or has been entitled to use a drug under the laws of this state
28 shall not constitute a defense against a charge of violating this
29 section.

1 (3) It is an affirmative defense to a violation of subsection
2 (1)(a) of this section which the defendant must prove by a
3 preponderance of the evidence that the defendant consumed a sufficient
4 quantity of alcohol after the time of driving and before the
5 administration of an analysis of the person's breath or blood to cause
6 the defendant's alcohol concentration to be 0.08 or more within two
7 hours after driving. The court shall not admit evidence of this
8 defense unless the defendant notifies the prosecution prior to the
9 omnibus or pretrial hearing in the case of the defendant's intent to
10 assert the affirmative defense.

11 (4) Analyses of blood or breath samples obtained more than two
12 hours after the alleged driving may be used as evidence that within two
13 hours of the alleged driving, a person had an alcohol concentration of
14 0.08 or more in violation of subsection (1)(a) of this section, and in
15 any case in which the analysis shows an alcohol concentration above
16 0.00 may be used as evidence that a person was under the influence of
17 or affected by intoxicating liquor or any drug in violation of
18 subsection (1)(b) or (c) of this section.

19 (5) Except as provided in subsection (6) of this section, a
20 violation of this section is a gross misdemeanor.

21 (6) It is a class C felony punishable under chapter 9.94A RCW, or
22 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has
23 four or more prior offenses within ten years as defined in RCW
24 46.61.5055; or (b) the person has ever previously been convicted of (i)
25 vehicular homicide while under the influence of intoxicating liquor or
26 any drug, RCW 46.61.520(1)(a), ~~((or))~~ (ii) vehicular assault while
27 under the influence of intoxicating liquor or any drug, RCW
28 46.61.522(1)(b), or (iii) an out-of-state offense comparable to the
29 offense specified in (b)(i) or (ii) of this subsection.

30 **Sec. 16.** RCW 46.61.504 and 2006 c 73 s 2 are each amended to read
31 as follows:

32 (1) A person is guilty of being in actual physical control of a
33 motor vehicle while under the influence of intoxicating liquor or any
34 drug if the person has actual physical control of a vehicle within this
35 state:

36 (a) And the person has, within two hours after being in actual

1 physical control of the vehicle, an alcohol concentration of 0.08 or
2 higher as shown by analysis of the person's breath or blood made under
3 RCW 46.61.506; or

4 (b) While the person is under the influence of or affected by
5 intoxicating liquor or any drug; or

6 (c) While the person is under the combined influence of or affected
7 by intoxicating liquor and any drug.

8 (2) The fact that a person charged with a violation of this section
9 is or has been entitled to use a drug under the laws of this state does
10 not constitute a defense against any charge of violating this section.
11 No person may be convicted under this section if, prior to being
12 pursued by a law enforcement officer, the person has moved the vehicle
13 safely off the roadway.

14 (3) It is an affirmative defense to a violation of subsection
15 (1)(a) of this section which the defendant must prove by a
16 preponderance of the evidence that the defendant consumed a sufficient
17 quantity of alcohol after the time of being in actual physical control
18 of the vehicle and before the administration of an analysis of the
19 person's breath or blood to cause the defendant's alcohol concentration
20 to be 0.08 or more within two hours after being in such control. The
21 court shall not admit evidence of this defense unless the defendant
22 notifies the prosecution prior to the omnibus or pretrial hearing in
23 the case of the defendant's intent to assert the affirmative defense.

24 (4) Analyses of blood or breath samples obtained more than two
25 hours after the alleged being in actual physical control of a vehicle
26 may be used as evidence that within two hours of the alleged being in
27 such control, a person had an alcohol concentration of 0.08 or more in
28 violation of subsection (1)(a) of this section, and in any case in
29 which the analysis shows an alcohol concentration above 0.00 may be
30 used as evidence that a person was under the influence of or affected
31 by intoxicating liquor or any drug in violation of subsection (1)(b) or
32 (c) of this section.

33 (5) Except as provided in subsection (6) of this section, a
34 violation of this section is a gross misdemeanor.

35 (6) It is a class C felony punishable under chapter 9.94A RCW, or
36 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has
37 four or more prior offenses within ten years as defined in RCW
38 46.61.5055; or (b) the person has ever previously been convicted of (i)

1 vehicular homicide while under the influence of intoxicating liquor or
2 any drug, RCW 46.61.520(1)(a), (~~(e)~~) (ii) vehicular assault while
3 under the influence of intoxicating liquor or any drug, RCW
4 46.61.522(1)(b), or (iii) an out-of-state offense comparable to the
5 offense specified in (b)(i) or (ii) of this subsection."

6 Renumber the remaining sections consecutively and correct any
7 internal references accordingly.

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8 On page 34, line 16 of the title amendment, after "46.20.740,"
9 strike "and 46.61.5055" and insert "46.61.5055, 46.61.502, and
10 46.61.504"

EFFECT: Makes DUI a felony if the person has an out-of-state conviction for an offense that is comparable to Washington's DUI-related vehicular assault or DUI-related vehicular homicide.

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