
SUBSTITUTE SENATE BILL 5326

State of Washington

62nd Legislature

2011 Regular Session

By Senate Judiciary (originally sponsored by Senators Kline, Zarelli, Kohl-Welles, Nelson, Rockefeller, and White)

READ FIRST TIME 02/08/11.

1 AN ACT Relating to negligent driving resulting in substantial
2 bodily harm, great bodily harm, or death of a vulnerable user of a
3 public way; amending RCW 46.63.070; reenacting and amending RCW
4 46.20.342; adding a new section to chapter 46.61 RCW; creating a new
5 section; prescribing penalties; and providing an effective date.

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

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

9 (1) A person commits negligent driving in the second degree with a
10 vulnerable user victim if, under circumstances not constituting
11 negligent driving in the first degree, he or she operates a vehicle, as
12 defined in RCW 46.04.670, in a manner that is both negligent and
13 endangers or is likely to endanger any person or property, and he or
14 she proximately causes the death, great bodily harm, or substantial
15 bodily harm of a vulnerable user of a public way.

16 (2) The law enforcement officer or prosecuting authority issuing
17 the notice of infraction for an offense under this section shall state
18 on the notice of infraction that the offense was a proximate cause of

1 death, great bodily harm, or substantial bodily harm, as defined in RCW
2 9A.04.110, of a vulnerable user of a public way.

3 (3) Persons under the age of sixteen who commit an infraction under
4 this section are subject to the provisions of RCW 13.40.250.

5 (4) A person found to have committed negligent driving in the
6 second degree with a vulnerable user victim shall be required to:

7 (a) Pay a monetary penalty of five thousand dollars, which may not
8 be reduced to an amount less than one thousand dollars; and

9 (b) Have his or her driving privileges suspended for ninety days.

10 (5) In lieu of the penalties imposed under subsection (4) of this
11 section, a person found to have committed negligent driving in the
12 second degree with a vulnerable user victim who requests and personally
13 appears for a hearing pursuant to RCW 46.63.070 (1) or (2) may elect
14 to:

15 (a) Pay a penalty of two hundred fifty dollars; and

16 (b) Complete a traffic safety course approved by the court; and

17 (c) Perform up to one hundred hours of community service, which
18 must be approved by the court and must include activities related to
19 driver improvement and providing public education on traffic safety;
20 and

21 (d) Submit certification to the court establishing that the
22 requirements of this subsection have been met within one year of the
23 hearing.

24 (6) Except as provided in (b) of this subsection, if a person found
25 to have committed a violation of this section elects the penalties
26 imposed under subsection (5) of this section but does not complete all
27 requirements of subsection (5) of this section within one year of the
28 hearing:

29 (a)(i) The court shall impose a monetary penalty in the amount of
30 five thousand dollars, which may not be reduced to an amount less than
31 one thousand dollars; and

32 (ii) The person's driving privileges shall be suspended for ninety
33 days.

34 (b) For good cause shown, the court may extend the period of time
35 in which the person must complete the requirements of subsection (5) of
36 this section before any of the penalties provided in this subsection
37 are imposed.

1 (7) An offense under this section is a traffic infraction. To the
2 extent not inconsistent with this section, the provisions of chapter
3 46.63 RCW shall apply to infractions under this section. Procedures
4 for the conduct of all hearings provided for in this section may be
5 established by rule of the supreme court.

6 (8) If a person is penalized under subsection (4) of this section,
7 then the court shall notify the department, and the department shall
8 suspend the person's driving privileges. If a person fails to meet the
9 requirements of subsection (5) of this section, the court shall notify
10 the department that the person has failed to meet the requirements of
11 subsection (5) of this section and the department shall suspend the
12 person's driving privileges. Notice provided by the court under this
13 subsection must be in a form specified by the department.

14 (9) Any act prohibited by this section that also constitutes a
15 crime under any other law of this state may be the basis of prosecution
16 under such other law notwithstanding that it may also be the basis for
17 prosecution under this section.

18 (10) For the purposes of this section:

19 (a) "Great bodily harm" and "substantial bodily harm" have the same
20 meaning as provided in RCW 9A.04.110.

21 (b) "Negligent" has the same meaning as provided in RCW
22 46.61.525(2).

23 (c) "Vulnerable user of a public way" means:

24 (i) A pedestrian;

25 (ii) A person riding an animal; or

26 (iii) A person operating any of the following on a public way:

27 (A) A farm tractor or implement of husbandry, without an enclosed
28 shell;

29 (B) A bicycle;

30 (C) An electric-assisted bicycle;

31 (D) An electric personal assistive mobility device;

32 (E) A moped;

33 (F) A motor-driven cycle; or

34 (G) A motorized foot scooter.

35 **Sec. 2.** RCW 46.20.342 and 2010 c 269 s 7 and 2010 c 252 s 4 are
36 each reenacted and amended to read as follows:

37 (1) It is unlawful for any person to drive a motor vehicle in this

1 state while that person is in a suspended or revoked status or when his
2 or her privilege to drive is suspended or revoked in this or any other
3 state. Any person who has a valid Washington driver's license is not
4 guilty of a violation of this section.

5 (a) A person found to be (~~an~~) a habitual offender under chapter
6 46.65 RCW, who violates this section while an order of revocation
7 issued under chapter 46.65 RCW prohibiting such operation is in effect,
8 is guilty of driving while license suspended or revoked in the first
9 degree, a gross misdemeanor. Upon the first such conviction, the
10 person shall be punished by imprisonment for not less than ten days.
11 Upon the second conviction, the person shall be punished by
12 imprisonment for not less than ninety days. Upon the third or
13 subsequent conviction, the person shall be punished by imprisonment for
14 not less than one hundred eighty days. If the person is also convicted
15 of the offense defined in RCW 46.61.502 or 46.61.504, when both
16 convictions arise from the same event, the minimum sentence of
17 confinement shall be not less than ninety days. The minimum sentence
18 of confinement required shall not be suspended or deferred. A
19 conviction under this subsection does not prevent a person from
20 petitioning for reinstatement as provided by RCW 46.65.080.

21 (b) A person who violates this section while an order of suspension
22 or revocation prohibiting such operation is in effect and while the
23 person is not eligible to reinstate his or her driver's license or
24 driving privilege, other than for a suspension for the reasons
25 described in (c) of this subsection, is guilty of driving while license
26 suspended or revoked in the second degree, a gross misdemeanor. For
27 the purposes of this subsection, a person is not considered to be
28 eligible to reinstate his or her driver's license or driving privilege
29 if the person is eligible to obtain an ignition interlock driver's
30 license but did not obtain such a license. This subsection applies
31 when a person's driver's license or driving privilege has been
32 suspended or revoked by reason of:

33 (i) A conviction of a felony in the commission of which a motor
34 vehicle was used;

35 (ii) A previous conviction under this section;

36 (iii) A notice received by the department from a court or diversion
37 unit as provided by RCW 46.20.265, relating to a minor who has

1 committed, or who has entered a diversion unit concerning an offense
2 relating to alcohol, legend drugs, controlled substances, or imitation
3 controlled substances;

4 (iv) A conviction of RCW 46.20.410, relating to the violation of
5 restrictions of an occupational driver's license, a temporary
6 restricted driver's license, or an ignition interlock driver's license;

7 (v) A conviction of RCW 46.20.345, relating to the operation of a
8 motor vehicle with a suspended or revoked license;

9 (vi) A conviction of RCW 46.52.020, relating to duty in case of
10 injury to or death of a person or damage to an attended vehicle;

11 (vii) A conviction of RCW 46.61.024, relating to attempting to
12 elude pursuing police vehicles;

13 (viii) A conviction of RCW 46.61.212(4), relating to reckless
14 endangerment of emergency zone workers;

15 (ix) A conviction of RCW 46.61.500, relating to reckless driving;

16 (x) A conviction of RCW 46.61.502 or 46.61.504, relating to a
17 person under the influence of intoxicating liquor or drugs;

18 (xi) A conviction of RCW 46.61.520, relating to vehicular homicide;

19 (xii) A conviction of RCW 46.61.522, relating to vehicular assault;

20 (xiii) A conviction of RCW 46.61.527(4), relating to reckless
21 endangerment of roadway workers;

22 (xiv) A conviction of RCW 46.61.530, relating to racing of vehicles
23 on highways;

24 (xv) A conviction of RCW 46.61.685, relating to leaving children in
25 an unattended vehicle with motor running;

26 (xvi) A conviction of RCW 46.61.740, relating to theft of motor
27 vehicle fuel;

28 (xvii) A conviction of RCW 46.64.048, relating to attempting,
29 aiding, abetting, coercing, and committing crimes;

30 (xviii) An administrative action taken by the department under
31 chapter 46.20 RCW; (~~or~~)

32 (xix) A conviction of a local law, ordinance, regulation, or
33 resolution of a political subdivision of this state, the federal
34 government, or any other state, of an offense substantially similar to
35 a violation included in this subsection; or

36 (xx) A finding that a person has committed a traffic infraction
37 under section 1 of this act and suspension of driving privileges
38 pursuant to section 1 (4)(b) or (6)(a)(ii) of this act.

1 (c) A person who violates this section when his or her driver's
2 license or driving privilege is, at the time of the violation,
3 suspended or revoked solely because (i) the person must furnish proof
4 of satisfactory progress in a required alcoholism or drug treatment
5 program, (ii) the person must furnish proof of financial responsibility
6 for the future as provided by chapter 46.29 RCW, (iii) the person has
7 failed to comply with the provisions of chapter 46.29 RCW relating to
8 uninsured accidents, (iv) the person has failed to respond to a notice
9 of traffic infraction, failed to appear at a requested hearing,
10 violated a written promise to appear in court, or has failed to comply
11 with the terms of a notice of traffic infraction or citation, as
12 provided in RCW 46.20.289, (v) the person has committed an offense in
13 another state that, if committed in this state, would not be grounds
14 for the suspension or revocation of the person's driver's license, (vi)
15 the person has been suspended or revoked by reason of one or more of
16 the items listed in (b) of this subsection, but was eligible to
17 reinstate his or her driver's license or driving privilege at the time
18 of the violation, or (vii) the person has received traffic citations or
19 notices of traffic infraction that have resulted in a suspension under
20 RCW 46.20.267 relating to intermediate drivers' licenses, or any
21 combination of (c)(i) through (vii) of this subsection, is guilty of
22 driving while license suspended or revoked in the third degree, a
23 misdemeanor. For the purposes of this subsection, a person is not
24 considered to be eligible to reinstate his or her driver's license or
25 driving privilege if the person is eligible to obtain an ignition
26 interlock driver's license but did not obtain such a license.

27 (2) Upon receiving a record of conviction of any person or upon
28 receiving an order by any juvenile court or any duly authorized court
29 officer of the conviction of any juvenile under this section, the
30 department shall:

31 (a) For a conviction of driving while suspended or revoked in the
32 first degree, as provided by subsection (1)(a) of this section, extend
33 the period of administrative revocation imposed under chapter 46.65 RCW
34 for an additional period of one year from and after the date the person
35 would otherwise have been entitled to apply for a new license or have
36 his or her driving privilege restored; or

37 (b) For a conviction of driving while suspended or revoked in the
38 second degree, as provided by subsection (1)(b) of this section, not

1 issue a new license or restore the driving privilege for an additional
2 period of one year from and after the date the person would otherwise
3 have been entitled to apply for a new license or have his or her
4 driving privilege restored; or

5 (c) Not extend the period of suspension or revocation if the
6 conviction was under subsection (1)(c) of this section. If the
7 conviction was under subsection (1)(a) or (b) of this section and the
8 court recommends against the extension and the convicted person has
9 obtained a valid driver's license, the period of suspension or
10 revocation shall not be extended.

11 **Sec. 3.** RCW 46.63.070 and 2006 c 327 s 7 are each amended to read
12 as follows:

13 (1) Any person who receives a notice of traffic infraction shall
14 respond to such notice as provided in this section within fifteen days
15 of the date of the notice.

16 (2) If the person determined to have committed the infraction does
17 not contest the determination the person shall respond by completing
18 the appropriate portion of the notice of infraction and submitting it,
19 either by mail or in person, to the court specified on the notice. A
20 check or money order in the amount of the penalty prescribed for the
21 infraction must be submitted with the response. When a response which
22 does not contest the determination is received, an appropriate order
23 shall be entered in the court's records, and a record of the response
24 and order shall be furnished to the department in accordance with RCW
25 46.20.270.

26 (3) If the person determined to have committed the infraction
27 wishes to contest the determination the person shall respond by
28 completing the portion of the notice of infraction requesting a hearing
29 and submitting it, either by mail or in person, to the court specified
30 on the notice. The court shall notify the person in writing of the
31 time, place, and date of the hearing, and that date shall not be sooner
32 than seven days from the date of the notice, except by agreement.

33 (4) If the person determined to have committed the infraction does
34 not contest the determination but wishes to explain mitigating
35 circumstances surrounding the infraction the person shall respond by
36 completing the portion of the notice of infraction requesting a hearing

1 for that purpose and submitting it, either by mail or in person, to the
2 court specified on the notice. The court shall notify the person in
3 writing of the time, place, and date of the hearing.

4 (5)(a) Except as provided in (b) (~~and~~), (c), and (d) of this
5 subsection, in hearings conducted pursuant to subsections (3) and (4)
6 of this section, the court may defer findings, or in a hearing to
7 explain mitigating circumstances may defer entry of its order, for up
8 to one year and impose conditions upon the defendant the court deems
9 appropriate. Upon deferring findings, the court may assess costs as
10 the court deems appropriate for administrative processing. If at the
11 end of the deferral period the defendant has met all conditions and has
12 not been determined to have committed another traffic infraction, the
13 court may dismiss the infraction.

14 (b) A person may not receive more than one deferral within a seven-
15 year period for traffic infractions for moving violations and more than
16 one deferral within a seven-year period for traffic infractions for
17 nonmoving violations.

18 (c) A person who is the holder of a commercial driver's license or
19 who was operating a commercial motor vehicle at the time of the
20 violation may not receive a deferral under this section.

21 (d) A person who commits negligent driving in the second degree
22 with a vulnerable user victim may not receive a deferral for this
23 infraction under this section.

24 (6) If any person issued a notice of traffic infraction:

25 (a) Fails to respond to the notice of traffic infraction as
26 provided in subsection (2) of this section; or

27 (b) Fails to appear at a hearing requested pursuant to subsection
28 (3) or (4) of this section;

29 the court shall enter an appropriate order assessing the monetary
30 penalty prescribed for the traffic infraction and any other penalty
31 authorized by this chapter and shall notify the department in
32 accordance with RCW 46.20.270, of the failure to respond to the notice
33 of infraction or to appear at a requested hearing.

34 NEW SECTION. Sec. 4. This act applies to infractions committed on
35 or after the effective date of this section.

1 NEW SECTION. **Sec. 5.** This act takes effect July 1, 2012.

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