

SSB 5437 - H COMM AMD

By Committee on Appropriations Subcommittee on General Government

ADOPTED 04/17/2013

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 79A.60.040 and 1998 c 213 s 7 are each amended to  
4 read as follows:

5 (1) It (~~shall be~~) is unlawful for any person to operate a vessel  
6 in a reckless manner.

7 (2) It (~~shall be a violation~~) is unlawful for a person to operate  
8 a vessel while under the influence of intoxicating liquor, marijuana,  
9 or any drug. A person is considered to be under the influence of  
10 intoxicating liquor, marijuana, or any drug if, within two hours of  
11 operating a vessel:

12 (a) The person has an alcohol concentration of 0.08 (~~grams~~) or  
13 (~~more of alcohol per two hundred ten liters of breath,~~) higher as  
14 shown by analysis of the person's breath or blood made under RCW  
15 46.61.506; or

16 (b) The person has (~~0.08 percent or more by weight of alcohol in~~  
17 ~~the person's blood, as shown by analysis of the person's blood made~~  
18 ~~under RCW 46.61.506~~) a THC concentration of 5.00 or higher as shown by  
19 analysis of the person's blood made under RCW 46.61.506; or

20 (c) The person is under the influence of or affected by  
21 intoxicating liquor, marijuana, or any drug; or

22 (d) The person is under the combined influence of or affected by  
23 intoxicating liquor, marijuana, and any drug.

24 (3) The fact that any person charged with a violation of this  
25 section is or has been entitled to use such drug under the laws of this  
26 state shall not constitute a defense against any charge of violating  
27 this section. (~~A person cited under this subsection may upon request~~  
28 ~~be given a breath test for breath alcohol or may request to have a~~  
29 ~~blood sample taken for blood alcohol analysis. An arresting officer~~  
30 ~~shall administer field sobriety tests when circumstances permit.~~

1        ~~(3))~~ (4) Any person who operates a vessel within this state is  
2 deemed to have given consent, subject to the provisions of RCW  
3 46.61.506, to a test or tests of the person's breath or blood for the  
4 purpose of determining the alcohol concentration, THC concentration, or  
5 presence of any drug in the person's breath or blood if arrested for  
6 any offense where, at the time of the arrest, the arresting officer has  
7 reasonable grounds to believe the person was operating a vessel while  
8 under the influence of intoxicating liquor, marijuana, or any drug.  
9 Neither consent nor this section precludes a police officer from  
10 obtaining a search warrant for a person's breath or blood. An  
11 arresting officer may administer field sobriety tests when  
12 circumstances permit.

13        (5) The test or tests of breath must be administered pursuant to  
14 RCW 46.20.308. Where the officer has reasonable grounds to believe  
15 that the person is under the influence of a drug, or where the person  
16 is incapable due to physical injury, physical incapacity, or other  
17 physical limitation, of providing a breath sample, or where the person  
18 is being treated in a hospital, clinic, doctor's office, emergency  
19 medical vehicle, ambulance, or other similar facility, a blood test  
20 must be administered by a qualified person as provided in RCW  
21 46.61.506(5). The officer shall warn the person that if the person  
22 refuses to take the test, the person will be issued a class 1 civil  
23 infraction under RCW 7.80.120.

24        (6) A violation of subsection (1) of this section is a  
25 misdemeanor(~~, punishable as provided under RCW 9.92.030~~). A  
26 violation of subsection (2) of this section is a gross misdemeanor. In  
27 addition to the statutory penalties imposed, the court may order the  
28 defendant to pay restitution for any damages or injuries resulting from  
29 the offense.

30        NEW SECTION. Sec. 2. A new section is added to chapter 79A.60 RCW  
31 to read as follows:

32        (1) The refusal of a person to submit to a test of the alcohol  
33 concentration, THC concentration, or presence of any drug in the  
34 person's blood or breath is not admissible into evidence at a  
35 subsequent criminal trial.

36        (2) A person's refusal to submit to a test or tests pursuant to RCW  
37 79A.60.040 constitutes a class 1 civil infraction under RCW 7.80.120.

1       **Sec. 3.** RCW 7.80.120 and 2003 c 365 s 3 and 2003 c 337 s 4 are  
2 each reenacted and amended to read as follows:

3       (1) A person found to have committed a civil infraction shall be  
4 assessed a monetary penalty.

5       (a) The maximum penalty and the default amount for a class 1 civil  
6 infraction shall be two hundred fifty dollars, not including statutory  
7 assessments, except for an infraction of state law involving (i)  
8 potentially dangerous litter as specified in RCW 70.93.060(4) (~~and an~~  
9 ~~infraction of state law involving~~) or violent video or computer games  
10 under RCW 9.91.180, in which case the maximum penalty and default  
11 amount is five hundred dollars; or (ii) a person's refusal to submit to  
12 a test or tests pursuant to RCW 79A.60.040 and section 2 of this act,  
13 in which case the maximum penalty and default amount is one thousand  
14 dollars;

15       (b) The maximum penalty and the default amount for a class 2 civil  
16 infraction shall be one hundred twenty-five dollars, not including  
17 statutory assessments;

18       (c) The maximum penalty and the default amount for a class 3 civil  
19 infraction shall be fifty dollars, not including statutory assessments;  
20 and

21       (d) The maximum penalty and the default amount for a class 4 civil  
22 infraction shall be twenty-five dollars, not including statutory  
23 assessments.

24       (2) The supreme court shall prescribe by rule the conditions under  
25 which local courts may exercise discretion in assessing fines for civil  
26 infractions.

27       (3) Whenever a monetary penalty is imposed by a court under this  
28 chapter it is immediately payable. If the person is unable to pay at  
29 that time the court may grant an extension of the period in which the  
30 penalty may be paid. If the penalty is not paid on or before the time  
31 established for payment, the court may proceed to collect the penalty  
32 in the same manner as other civil judgments and may notify the  
33 prosecuting authority of the failure to pay.

34       (4) The court may also order a person found to have committed a  
35 civil infraction to make restitution.

36       **Sec. 4.** RCW 10.31.100 and 2010 c 274 s 201 are each amended to  
37 read as follows:

1 A police officer having probable cause to believe that a person has  
2 committed or is committing a felony shall have the authority to arrest  
3 the person without a warrant. A police officer may arrest a person  
4 without a warrant for committing a misdemeanor or gross misdemeanor  
5 only when the offense is committed in the presence of the officer,  
6 except as provided in subsections (1) through (~~(+10)~~) (11) of this  
7 section.

8 (1) Any police officer having probable cause to believe that a  
9 person has committed or is committing a misdemeanor or gross  
10 misdemeanor, involving physical harm or threats of harm to any person  
11 or property or the unlawful taking of property or involving the use or  
12 possession of cannabis, or involving the acquisition, possession, or  
13 consumption of alcohol by a person under the age of twenty-one years  
14 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070  
15 or 9A.52.080, shall have the authority to arrest the person.

16 (2) A police officer shall arrest and take into custody, pending  
17 release on bail, personal recognizance, or court order, a person  
18 without a warrant when the officer has probable cause to believe that:

19 (a) An order has been issued of which the person has knowledge  
20 under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26,  
21 26.50, or 74.34 RCW restraining the person and the person has violated  
22 the terms of the order restraining the person from acts or threats of  
23 violence, or restraining the person from going onto the grounds of or  
24 entering a residence, workplace, school, or day care, or prohibiting  
25 the person from knowingly coming within, or knowingly remaining within,  
26 a specified distance of a location or, in the case of an order issued  
27 under RCW 26.44.063, imposing any other restrictions or conditions upon  
28 the person; or

29 (b) A foreign protection order, as defined in RCW 26.52.010, has  
30 been issued of which the person under restraint has knowledge and the  
31 person under restraint has violated a provision of the foreign  
32 protection order prohibiting the person under restraint from contacting  
33 or communicating with another person, or excluding the person under  
34 restraint from a residence, workplace, school, or day care, or  
35 prohibiting the person from knowingly coming within, or knowingly  
36 remaining within, a specified distance of a location, or a violation of  
37 any provision for which the foreign protection order specifically  
38 indicates that a violation will be a crime; or

1 (c) The person is sixteen years or older and within the preceding  
2 four hours has assaulted a family or household member as defined in RCW  
3 10.99.020 and the officer believes: (i) A felonious assault has  
4 occurred; (ii) an assault has occurred which has resulted in bodily  
5 injury to the victim, whether the injury is observable by the  
6 responding officer or not; or (iii) that any physical action has  
7 occurred which was intended to cause another person reasonably to fear  
8 imminent serious bodily injury or death. Bodily injury means physical  
9 pain, illness, or an impairment of physical condition. When the  
10 officer has probable cause to believe that family or household members  
11 have assaulted each other, the officer is not required to arrest both  
12 persons. The officer shall arrest the person whom the officer believes  
13 to be the primary physical aggressor. In making this determination,  
14 the officer shall make every reasonable effort to consider: (i) The  
15 intent to protect victims of domestic violence under RCW 10.99.010;  
16 (ii) the comparative extent of injuries inflicted or serious threats  
17 creating fear of physical injury; and (iii) the history of domestic  
18 violence of each person involved, including whether the conduct was  
19 part of an ongoing pattern of abuse.

20 (3) Any police officer having probable cause to believe that a  
21 person has committed or is committing a violation of any of the  
22 following traffic laws shall have the authority to arrest the person:

23 (a) RCW 46.52.010, relating to duty on striking an unattended car  
24 or other property;

25 (b) RCW 46.52.020, relating to duty in case of injury to or death  
26 of a person or damage to an attended vehicle;

27 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or  
28 racing of vehicles;

29 (d) RCW 46.61.502 or 46.61.504, relating to persons under the  
30 influence of intoxicating liquor or drugs;

31 (e) RCW 46.20.342, relating to driving a motor vehicle while  
32 operator's license is suspended or revoked;

33 (f) RCW 46.61.5249, relating to operating a motor vehicle in a  
34 negligent manner.

35 (4) A law enforcement officer investigating at the scene of a motor  
36 vehicle accident may arrest the driver of a motor vehicle involved in  
37 the accident if the officer has probable cause to believe that the

1 driver has committed in connection with the accident a violation of any  
2 traffic law or regulation.

3 (5)(a) A law enforcement officer investigating at the scene of a  
4 motor vessel accident may arrest the operator of a motor vessel  
5 involved in the accident if the officer has probable cause to believe  
6 that the operator has committed, in connection with the accident, a  
7 criminal violation of chapter 79A.60 RCW.

8 (b) A law enforcement officer investigating at the scene of a motor  
9 vessel accident may issue a citation for an infraction to the operator  
10 of a motor vessel involved in the accident if the officer has probable  
11 cause to believe that the operator has committed, in connection with  
12 the accident, a violation of any boating safety law of chapter 79A.60  
13 RCW.

14 (6) Any police officer having probable cause to believe that a  
15 person has committed or is committing a violation of RCW 79A.60.040  
16 shall have the authority to arrest the person.

17 ~~((+6))~~ (7) An officer may act upon the request of a law  
18 enforcement officer in whose presence a traffic infraction was  
19 committed, to stop, detain, arrest, or issue a notice of traffic  
20 infraction to the driver who is believed to have committed the  
21 infraction. The request by the witnessing officer shall give an  
22 officer the authority to take appropriate action under the laws of the  
23 state of Washington.

24 ~~((+7))~~ (8) Any police officer having probable cause to believe  
25 that a person has committed or is committing any act of indecent  
26 exposure, as defined in RCW 9A.88.010, may arrest the person.

27 ~~((+8))~~ (9) A police officer may arrest and take into custody,  
28 pending release on bail, personal recognizance, or court order, a  
29 person without a warrant when the officer has probable cause to believe  
30 that an order has been issued of which the person has knowledge under  
31 chapter 10.14 RCW and the person has violated the terms of that order.

32 ~~((+9))~~ (10) Any police officer having probable cause to believe  
33 that a person has, within twenty-four hours of the alleged violation,  
34 committed a violation of RCW 9A.50.020 may arrest such person.

35 ~~((+10))~~ (11) A police officer having probable cause to believe  
36 that a person illegally possesses or illegally has possessed a firearm  
37 or other dangerous weapon on private or public elementary or secondary  
38 school premises shall have the authority to arrest the person.

1 For purposes of this subsection, the term "firearm" has the meaning  
2 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning  
3 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

4 ~~((+11+))~~ (12) Except as specifically provided in subsections (2),  
5 (3), (4), and ~~((+6+))~~ (7) of this section, nothing in this section  
6 extends or otherwise affects the powers of arrest prescribed in Title  
7 46 RCW.

8 ~~((+12+))~~ (13) No police officer may be held criminally or civilly  
9 liable for making an arrest pursuant to subsection (2) or ~~((+8+))~~ (9)  
10 of this section if the police officer acts in good faith and without  
11 malice.

12 NEW SECTION. Sec. 5. A new section is added to chapter 79A.60 RCW  
13 to read as follows:

14 (1) No person who has vessels for hire, or the agent or employee  
15 thereof, shall rent, lease, charter, or otherwise permit the use of a  
16 vessel, unless the person:

17 (a) Displays the vessel registration numbers and a valid decal on  
18 the vessel hull as required by RCW 88.02.550(1);

19 (b) Keeps a copy of the vessel registration certificate aboard the  
20 vessel, in compliance with RCW 88.02.340;

21 (c) Displays a carbon monoxide decal on the vessel as required by  
22 RCW 88.02.390(2) if the vessel is motor-driven and is not a personal  
23 watercraft;

24 (d) Provides a copy of the rental agreement to be kept aboard  
25 during the rental, lease, charter, or use period for vessels required  
26 under chapter 88.02 RCW to be registered;

27 (e) Ensures that the vessel, if motor-propelled, meets the muffler  
28 or underwater exhaust system requirement in RCW 79A.60.130;

29 (f) Outfits the vessel with the quantity and type of personal  
30 floatation devices required by RCW 79A.60.140 and 79A.60.160 for the  
31 number and ages of the people who will use the vessel;

32 (g) Explains the personal floatation device requirements to the  
33 person renting, leasing, chartering, or otherwise using the vessel;

34 (h) Equips the vessel with a skier-down flag, and explains observer  
35 and personal floatation requirements of RCW 79A.60.170, if the persons  
36 renting, leasing, chartering, or otherwise using the vessel will be  
37 waterskiing;

1 (i) If the vessel is a personal watercraft, provides a personal  
2 floatation device and a lanyard attached to an engine cutoff switch for  
3 the operator to wear at all times when operating the personal  
4 watercraft, as required by RCW 79A.60.190;

5 (j) Reviews with the person operating the vessel, and all other  
6 persons who the operator may permit to operate the vessel, all the  
7 information contained in the motor vessel safety operating and  
8 equipment checklist prescribed by the Washington state parks and  
9 recreation commission and required under RCW 79A.60.640(6); and

10 (k) Provides all other safety equipment required by RCW 79A.60.110  
11 and referenced in the motor vessel safety operating and equipment  
12 checklist prescribed by the Washington state parks and recreation  
13 commission and required under RCW 79A.60.640(6).

14 (2) This section does not apply to fishing guides and charter boat  
15 operators who have a United States coast guard operator's license and  
16 are operating on navigable waters, and people who act in the capacity  
17 of a paid whitewater river outfitter or guide, or who operate a vessel  
18 carrying passengers for hire on whitewater rivers in this state.

19 (3) As provided in RCW 79A.60.020, a violation of this section is  
20 a civil infraction punishable under chapter 7.84 RCW, unless:

21 (a) The violation is a violation of RCW 88.02.550, which is  
22 punished as a class 2 civil infraction; or

23 (b) The current violation is the person's third violation of the  
24 same provision of this chapter during the past three hundred sixty-five  
25 days. If it is the person's third violation, then it must be punished  
26 as a misdemeanor under RCW 9.92.030.

27 **Sec. 6.** RCW 79A.60.150 and 1993 c 244 s 13 are each amended to  
28 read as follows:

29 ~~If ((an infraction is issued under this chapter because a vessel~~  
30 ~~does not contain the required equipment and if the operator is not the~~  
31 ~~owner of the vessel, but is operating the vessel with the express or~~  
32 ~~implied permission of the owner, then either or both operator or owner~~  
33 ~~may be cited for the infraction)) a vessel does not contain the safety~~  
34 ~~equipment required under this chapter and the rules of the commission,~~  
35 ~~and the operator is not the owner of the vessel but is operating the~~  
36 ~~vessel with the express or implied permission of the owner, then either~~

1 the owner or the operator, or both, may be cited for the applicable  
2 infraction or charged with the applicable crime."

3 Correct the title.

EFFECT: Provides that the boat operator's refusal to take a  
breath or blood test is not admissible into evidence in a criminal  
trial.

Doubles the penalty for the infraction to \$1000.

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