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**SUBSTITUTE HOUSE BILL 2574**

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**State of Washington**

**64th Legislature**

**2016 Regular Session**

**By** House Transportation (originally sponsored by Representatives Farrell, Fey, Peterson, Moscoso, Clibborn, Fitzgibbon, Kilduff, Robinson, McBride, and Gregerson)

READ FIRST TIME 02/09/16.

1 AN ACT Relating to enhancing public safety by reducing distracted  
2 driving incidents caused by the use of personal wireless  
3 communications devices; amending RCW 46.20.055, 46.20.075, and  
4 46.25.010; adding a new section to chapter 46.61 RCW; adding a new  
5 section to chapter 43.43 RCW; creating a new section; repealing RCW  
6 46.61.667 and 46.61.668; prescribing penalties; and providing an  
7 effective date.

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

9 NEW SECTION. **Sec. 1.** The legislature recognizes that personal  
10 wireless communications devices can be a benefit to an individual  
11 through their convenience and efficiency, but that they are also a  
12 unique distraction to drivers that increases the risk of vehicle  
13 collisions. The legislature further recognizes that distracted  
14 driving is one of the top three behavioral factors in deadly crashes  
15 and that, for Washington state to enhance public safety, the existing  
16 personal wireless communications device laws must be amended to  
17 adjust to and take advantage of new technology that can reduce the  
18 distraction caused by manipulating these devices. As such, it is the  
19 intent of the legislature that our state's existing personal wireless  
20 communications device laws be updated to clarify the law in light of  
21 new technology to provide a safety benefit and reduce crashes.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 46.61  
2 RCW to read as follows:

3        (1) A person operating a motor vehicle on a public highway (a)  
4 while holding a personal wireless communications device in his or her  
5 hand or hands or (b) while using a personal wireless communications  
6 device to read or manually enter data is guilty of a traffic  
7 infraction. This subsection (1) does not prohibit the use of a  
8 personal wireless communications device that is equipped with an  
9 attachment or addition, whether or not permanently part of such  
10 device, or that is physically or electronically integrated into a  
11 motor vehicle by which a user engages in communication without the  
12 use of either hand; however, this does not preclude the use of either  
13 hand to activate, deactivate, or initiate a function of the device.

14        (2) Subsection (1) of this section does not apply to:

15        (a) A driver who uses a personal wireless communications device  
16 to contact emergency services;

17        (b) The use by a transit system employee of a system for time-  
18 sensitive relay communication between the transit system employee and  
19 the transit system's dispatch services;

20        (c) Emergency services personnel who use a personal wireless  
21 communications device while operating an emergency services vehicle,  
22 so long as they have completed a training course offered by the  
23 Washington state patrol pursuant to section 6 of this act;

24        (d) An individual employed as a commercial motor vehicle driver  
25 who uses a personal wireless communications device within the scope  
26 of such individual's employment if such use is permitted under 49  
27 U.S.C. Sec. 31136 as it existed on the effective date of this  
28 section;

29        (e) A driver of a vehicle that is engaged in a process by which  
30 the vehicle autonomously parks itself without input from the driver;  
31 or

32        (f) Any person riding in a fully autonomous vehicle that uses  
33 computers, sensors, and other technology and devices to enable the  
34 vehicle to safely operate without active control and continuous  
35 monitoring of a human operator, but which does not include vehicles  
36 equipped with one or more crash avoidance systems, including  
37 electronic blind spot assistance, automated emergency braking  
38 systems, adaptive cruise control, lane keep assist, lane departure  
39 warning, traffic jam and queuing assist, or other similar systems

1 that are not capable of driving the vehicle without the active  
2 control and continuous monitoring of a human operator.

3 (3) For purposes of this section: (a) "Operating a motor vehicle"  
4 includes the operation of a motor vehicle while it is moving and  
5 while it is temporarily stationary because of traffic or a stop sign,  
6 and does not include when the vehicle is temporarily stationary  
7 because of a traffic light or has pulled over to the side of, or off,  
8 the roadway and has stopped in a location where it can safely remain  
9 stationary; and (b) "personal wireless communications device"  
10 includes a device through which personal wireless services, as  
11 defined in 47 U.S.C. Sec. 332(c)(7)(C)(i), are transmitted, and does  
12 not include a global navigation satellite system receiver used for  
13 positioning, emergency notification, or navigation purposes.

14 (4) The state preempts the field of regulating the use of  
15 personal wireless communications devices in motor vehicles, and this  
16 section supersedes any local laws, ordinances, orders, rules, or  
17 regulations enacted by any political subdivision or municipality to  
18 regulate the use of personal wireless communications devices by the  
19 operator of a motor vehicle.

20 (5) Except in the case of a driver that holds a commercial  
21 driver's license issued under chapter 46.25 RCW, a first finding that  
22 a person has committed a traffic infraction under this section shall  
23 not be made available to insurance companies or employers.

24 (6) If a person is found to have committed a traffic infraction  
25 under this section, all monetary penalty and fee amounts collected  
26 for this infraction under RCW 46.63.110, notwithstanding the  
27 provisions under RCW 46.63.110 or any other section of this chapter  
28 regarding the allocation of monetary penalties and fees, shall be  
29 deposited into the highway safety fund under RCW 46.68.060 and may  
30 only be used to support programs that contribute to driver education.  
31 Funds collected for this infraction may not be used for any other  
32 purpose.

33 **Sec. 3.** RCW 46.20.055 and 2012 c 80 s 5 are each amended to read  
34 as follows:

35 (1) **Driver's instruction permit.** The department may issue a  
36 driver's instruction permit with or without a photograph to an  
37 applicant who has successfully passed all parts of the examination  
38 other than the driving test, provided the information required by RCW

1 46.20.091, paid an application fee of twenty-five dollars, and meets  
2 the following requirements:

3 (a) Is at least fifteen and one-half years of age; or

4 (b) Is at least fifteen years of age and:

5 (i) Has submitted a proper application; and

6 (ii) Is enrolled in a traffic safety education program offered,  
7 approved, and accredited by the superintendent of public instruction  
8 or offered by a driver training school licensed and inspected by the  
9 department of licensing under chapter 46.82 RCW, that includes  
10 practice driving.

11 (2) **Waiver of written examination for instruction permit.** The  
12 department may waive the written examination, if, at the time of  
13 application, an applicant is enrolled in:

14 (a) A traffic safety education course as defined by RCW  
15 28A.220.020(2); or

16 (b) A course of instruction offered by a licensed driver training  
17 school as defined by RCW 46.82.280.

18 The department may require proof of registration in such a course  
19 as it deems necessary.

20 (3) **Effect of instruction permit.** A person holding a driver's  
21 instruction permit may drive a motor vehicle, other than a  
22 motorcycle, upon the public highways if:

23 (a) The person has immediate possession of the permit;

24 (b) The person is not using a wireless communications device,  
25 unless the person is using the device to (~~report illegal activity,~~  
26 ~~summon medical or other emergency help, or prevent injury to a person~~  
27 ~~or property~~)) contact emergency services; and

28 (c) An approved instructor, or a licensed driver with at least  
29 five years of driving experience, occupies the seat beside the  
30 driver.

31 (4) **Term of instruction permit.** A driver's instruction permit is  
32 valid for one year from the date of issue.

33 (a) The department may issue one additional one-year permit.

34 (b) The department may issue a third driver's permit if it finds  
35 after an investigation that the permittee is diligently seeking to  
36 improve driving proficiency.

37 (c) A person applying for an additional instruction permit must  
38 submit the application to the department in person and pay an  
39 application fee of twenty-five dollars for each issuance.

1       **Sec. 4.** RCW 46.20.075 and 2011 c 60 s 44 are each amended to  
2 read as follows:

3       (1) An intermediate license authorizes the holder to drive a  
4 motor vehicle under the conditions specified in this section. An  
5 applicant for an intermediate license must be at least sixteen years  
6 of age and:

7       (a) Have possessed a valid instruction permit for a period of not  
8 less than six months;

9       (b) Have passed a driver licensing examination administered by  
10 the department;

11       (c) Have passed a course of driver's education in accordance with  
12 the standards established in RCW 46.20.100;

13       (d) Present certification by his or her parent, guardian, or  
14 employer to the department stating (i) that the applicant has had at  
15 least fifty hours of driving experience, ten of which were at night,  
16 during which the driver was supervised by a person at least twenty-  
17 one years of age who has had a valid driver's license for at least  
18 three years, and (ii) that the applicant has not been issued a notice  
19 of traffic infraction or cited for a traffic violation that is  
20 pending at the time of the application for the intermediate license;

21       (e) Not have been convicted of or found to have committed a  
22 traffic violation within the last six months before the application  
23 for the intermediate license; and

24       (f) Not have been adjudicated for an offense involving the use of  
25 alcohol or drugs during the period the applicant held an instruction  
26 permit.

27       (2) For the first six months after the issuance of an  
28 intermediate license or until the holder reaches eighteen years of  
29 age, whichever occurs first, the holder of the license may not  
30 operate a motor vehicle that is carrying any passengers under the age  
31 of twenty who are not members of the holder's immediate family as  
32 defined in RCW 42.17A.005. For the remaining period of the  
33 intermediate license, the holder may not operate a motor vehicle that  
34 is carrying more than three passengers who are under the age of  
35 twenty who are not members of the holder's immediate family.

36       (3) The holder of an intermediate license may not operate a motor  
37 vehicle between the hours of 1 a.m. and 5 a.m. except when the holder  
38 is accompanied by a parent, guardian, or a licensed driver who is at  
39 least twenty-five years of age.

1 (4) The holder of an intermediate license may not operate a  
2 moving motor vehicle while using a wireless communications device  
3 unless the holder is using the device to (~~report illegal activity,~~  
4 ~~summon medical or other emergency help, or prevent injury to a person~~  
5 ~~or property~~) contact emergency services.

6 (5) It is a traffic infraction for the holder of an intermediate  
7 license to operate a motor vehicle in violation of the restrictions  
8 imposed under this section.

9 (6) Except for a violation of subsection (4) of this section,  
10 enforcement of this section by law enforcement officers may be  
11 accomplished only as a secondary action when a driver of a motor  
12 vehicle has been detained for a suspected violation of this title or  
13 an equivalent local ordinance or some other offense.

14 (7) An intermediate licensee may drive at any hour without  
15 restrictions on the number of passengers in the vehicle if necessary  
16 for agricultural purposes.

17 (8) An intermediate licensee may drive at any hour without  
18 restrictions on the number of passengers in the vehicle if, for the  
19 twelve-month period following the issuance of the intermediate  
20 license, he or she:

21 (a) Has not been involved in an accident involving only one motor  
22 vehicle;

23 (b) Has not been involved in an accident where he or she was  
24 cited in connection with the accident or was found to have caused the  
25 accident;

26 (c) Has not been involved in an accident where no one was cited  
27 or was found to have caused the accident; and

28 (d) Has not been convicted of or found to have committed a  
29 traffic offense described in chapter 46.61 RCW or violated  
30 restrictions placed on an intermediate licensee under this section.

31 **Sec. 5.** RCW 46.25.010 and 2013 c 224 s 3 are each amended to  
32 read as follows:

33 The definitions set forth in this section apply throughout this  
34 chapter.

35 (1) "Alcohol" means any substance containing any form of alcohol,  
36 including but not limited to ethanol, methanol, propanol, and  
37 isopropanol.

38 (2) "Alcohol concentration" means:

- 1 (a) The number of grams of alcohol per one hundred milliliters of  
2 blood; or
- 3 (b) The number of grams of alcohol per two hundred ten liters of  
4 breath.
- 5 (3) "Commercial driver's license" (CDL) means a license issued to  
6 an individual under chapter 46.20 RCW that has been endorsed in  
7 accordance with the requirements of this chapter to authorize the  
8 individual to drive a class of commercial motor vehicle.
- 9 (4) The "commercial driver's license information system" (CDLIS)  
10 is the information system established pursuant to 49 U.S.C. Sec.  
11 31309 to serve as a clearinghouse for locating information related to  
12 the licensing and identification of commercial motor vehicle drivers.
- 13 (5) "Commercial learner's permit" (CLP) means a permit issued  
14 under RCW 46.25.052 for the purposes of behind-the-wheel training.
- 15 (6) "Commercial motor vehicle" means a motor vehicle or  
16 combination of motor vehicles used in commerce to transport  
17 passengers or property if the motor vehicle:
- 18 (a) Has a gross combination weight rating or gross combination  
19 weight of 11,794 kilograms or more (26,001 pounds or more), whichever  
20 is greater, inclusive of (~~(a-[any])~~) any towed unit (~~([for-units])~~) or  
21 units with a gross vehicle weight rating or gross vehicle weight of  
22 more than 4,536 kilograms (10,000 pounds or more), whichever is  
23 greater; or
- 24 (b) Has a gross vehicle weight rating or gross vehicle weight of  
25 11,794 kilograms or more (26,001 pounds or more), whichever is  
26 greater; or
- 27 (c) Is designed to transport sixteen or more passengers,  
28 including the driver; or
- 29 (d) Is of any size and is used in the transportation of hazardous  
30 materials as defined in this section; or
- 31 (e) Is a school bus regardless of weight or size.
- 32 (7) "Conviction" means an unvacated adjudication of guilt, or a  
33 determination that a person has violated or failed to comply with the  
34 law in a court of original jurisdiction or by an authorized  
35 administrative tribunal, an unvacated forfeiture of bail or  
36 collateral deposited to secure the person's appearance in court, a  
37 plea of guilty or nolo contendere accepted by the court, the payment  
38 of a fine or court cost, entry into a deferred prosecution program  
39 under chapter 10.05 RCW, or violation of a condition of release

1 without bail, regardless of whether or not the penalty is rebated,  
2 suspended, or probated.

3 (8) "Disqualification" means a prohibition against driving a  
4 commercial motor vehicle.

5 (9) "Drive" means to drive, operate, or be in physical control of  
6 a motor vehicle in any place open to the general public for purposes  
7 of vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and  
8 46.25.120, "drive" includes operation or physical control of a motor  
9 vehicle anywhere in the state.

10 (10) "Drugs" are those substances as defined by RCW 69.04.009,  
11 including, but not limited to, those substances defined by 49 C.F.R.  
12 Sec. 40.3.

13 (11) "Employer" means any person, including the United States, a  
14 state, or a political subdivision of a state, who owns or leases a  
15 commercial motor vehicle, or assigns a person to drive a commercial  
16 motor vehicle.

17 (12) "Gross vehicle weight rating" (GVWR) means the value  
18 specified by the manufacturer as the maximum loaded weight of a  
19 single vehicle. The GVWR of a combination or articulated vehicle,  
20 commonly referred to as the "gross combined weight rating" or GCWR,  
21 is the GVWR of the power unit plus the GVWR of the towed unit or  
22 units. If the GVWR of any unit cannot be determined, the actual gross  
23 weight will be used. If a vehicle with a GVWR of less than 11,794  
24 kilograms (26,001 pounds or less) has been structurally modified to  
25 carry a heavier load, then the actual gross weight capacity of the  
26 modified vehicle, as determined by RCW 46.44.041 and 46.44.042, will  
27 be used as the GVWR.

28 (13) "Hazardous materials" means any material that has been  
29 designated as hazardous under 49 U.S.C. Sec. 5103 and is required to  
30 be placarded under subpart F of 49 C.F.R. Part 172 or any quantity of  
31 a material listed as a select agent or toxin in 42 C.F.R. Part 73.

32 (14) "Motor vehicle" means a vehicle, machine, tractor, trailer,  
33 or semitrailer propelled or drawn by mechanical power used on  
34 highways, or any other vehicle required to be registered under the  
35 laws of this state, but does not include a vehicle, machine, tractor,  
36 trailer, or semitrailer operated exclusively on a rail.

37 (15) "Out-of-service order" means a declaration by an authorized  
38 enforcement officer of a federal, state, Canadian, Mexican, or local  
39 jurisdiction that a driver, a commercial motor vehicle, or a motor  
40 carrier operation is out-of-service pursuant to 49 C.F.R. Secs.

1 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North  
2 American uniform out-of-service criteria.

3 (16) "Positive alcohol confirmation test" means an alcohol  
4 confirmation test that:

5 (a) Has been conducted by a breath alcohol technician under 49  
6 C.F.R. Part 40; and

7 (b) Indicates an alcohol concentration of 0.04 or more.

8 A report that a person has refused an alcohol test, under  
9 circumstances that constitute the refusal of an alcohol test under 49  
10 C.F.R. Part 40, will be considered equivalent to a report of a  
11 positive alcohol confirmation test for the purposes of this chapter.

12 (17) "School bus" means a commercial motor vehicle used to  
13 transport preprimary, primary, or secondary school students from home  
14 to school, from school to home, or to and from school-sponsored  
15 events. School bus does not include a bus used as a common carrier.

16 (18) "Serious traffic violation" means:

17 (a) Excessive speeding, defined as fifteen miles per hour or more  
18 in excess of the posted limit;

19 (b) Reckless driving, as defined under state or local law;

20 (c) Driving while ~~((using))~~ holding a ~~((hand-held))~~ personal  
21 wireless communications device ~~((hand-held mobile telephone))~~,  
22 defined as a violation of ~~((RCW 46.61.667(1)(b))~~ section 2(1)(a) of  
23 this act or an equivalent administrative rule or local law,  
24 ordinance, rule, or resolution;

25 (d) Texting, defined as a violation of ~~((RCW 46.61.668(1)(a))~~  
26 section 2(1)(b) of this act or an equivalent administrative rule or  
27 local law, ordinance, rule, or resolution;

28 (e) A violation of a state or local law relating to motor vehicle  
29 traffic control, other than a parking violation, arising in  
30 connection with an accident or collision resulting in death to any  
31 person;

32 (f) Driving a commercial motor vehicle without obtaining a  
33 commercial driver's license;

34 (g) Driving a commercial motor vehicle without a commercial  
35 driver's license in the driver's possession; however, any individual  
36 who provides proof to the court by the date the individual must  
37 appear in court or pay any fine for such a violation, that the  
38 individual held a valid CDL on the date the citation was issued, is  
39 not guilty of a "serious traffic violation";

1 (h) Driving a commercial motor vehicle without the proper class  
2 of commercial driver's license endorsement or endorsements for the  
3 specific vehicle group being operated or for the passenger or type of  
4 cargo being transported; and

5 (i) Any other violation of a state or local law relating to motor  
6 vehicle traffic control, other than a parking violation, that the  
7 department determines by rule to be serious.

8 (19) "State" means a state of the United States and the District  
9 of Columbia.

10 (20) "Substance abuse professional" means an alcohol and drug  
11 specialist meeting the credentials, knowledge, training, and  
12 continuing education requirements of 49 C.F.R. Sec. 40.281.

13 (21) "Tank vehicle" means any commercial motor vehicle that is  
14 designed to transport any liquid or gaseous materials within a tank  
15 or tanks having an individual rated capacity of more than one hundred  
16 nineteen gallons and an aggregate rated capacity of one thousand  
17 gallons or more that is either permanently or temporarily attached to  
18 the vehicle or the chassis. A commercial motor vehicle transporting  
19 an empty storage container tank, not designed for transportation,  
20 with a rated capacity of one thousand gallons or more that is  
21 temporarily attached to a flatbed trailer is not considered a tank  
22 vehicle.

23 (22) "Type of driving" means one of the following:

24 (a) "Nonexcepted interstate," which means the CDL or CLP holder  
25 or applicant operates or expects to operate in interstate commerce,  
26 is both subject to and meets the qualification requirements under 49  
27 C.F.R. Part 391 as it existed on July 8, 2014, or such subsequent  
28 date as may be provided by the department by rule, consistent with  
29 the purposes of this section, and is required to obtain a medical  
30 examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on  
31 July 8, 2014, or such subsequent date as may be provided by the  
32 department by rule, consistent with the purposes of this section;

33 (b) "Excepted interstate," which means the CDL or CLP holder or  
34 applicant operates or expects to operate in interstate commerce, but  
35 engages exclusively in transportation or operations excepted under 49  
36 C.F.R. Secs. 390.3(f), 391.2, 391.68, or 398.3, as they existed on  
37 July 8, 2014, or such subsequent date as may be provided by the  
38 department by rule, consistent with the purposes of this section,  
39 from all or parts of the qualification requirements of 49 C.F.R. Part  
40 391 as it existed on July 8, 2014, or such subsequent date as may be

1 provided by the department by rule, consistent with the purposes of  
2 this section, and is therefore not required to obtain a medical  
3 examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on  
4 July 8, 2014, or such subsequent date as may be provided by the  
5 department by rule, consistent with the purposes of this section;

6 (c) "Nonexcepted intrastate," which means the CDL or CLP holder  
7 or applicant operates only in intrastate commerce and is therefore  
8 subject to state driver qualification requirements; or

9 (d) "Excepted intrastate," which means the CDL or CLP holder or  
10 applicant operates in intrastate commerce, but engages exclusively in  
11 transportation or operations excepted from all or parts of the state  
12 driver qualification requirements.

13 (23) "United States" means the fifty states and the District of  
14 Columbia.

15 (24) "Verified positive drug test" means a drug test result or  
16 validity testing result from a laboratory certified under the  
17 authority of the federal department of health and human services  
18 that:

19 (a) Indicates a drug concentration at or above the cutoff  
20 concentration established under 49 C.F.R. Sec. 40.87; and

21 (b) Has undergone review and final determination by a medical  
22 review officer.

23 A report that a person has refused a drug test, under  
24 circumstances that constitute the refusal of a federal department of  
25 transportation drug test under 49 C.F.R. Part 40, will be considered  
26 equivalent to a report of a verified positive drug test for the  
27 purposes of this chapter.

28 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.43  
29 RCW to read as follows:

30 (1) The Washington state patrol must offer to emergency services  
31 personnel a training course on the safe operation of an emergency  
32 services vehicle while using a personal wireless communications  
33 device.

34 (2) The Washington state patrol may adopt rules to implement this  
35 section.

36 NEW SECTION. **Sec. 7.** The following acts or parts of acts are  
37 each repealed:

1           (1) RCW 46.61.667 (Using a wireless communications device or  
2 hand-held mobile telephone while driving) and 2013 c 224 s 15, 2010 c  
3 223 s 3, & 2007 c 417 s 2; and

4           (2) RCW 46.61.668 (Sending, reading, or writing a text message  
5 while driving) and 2013 c 224 s 16, 2010 c 223 s 4, & 2007 c 416 s 1.

6           NEW SECTION.   **Sec. 8.** This act takes effect August 1, 2016.

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