

SENATE BILL REPORT

SHB 1183

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 28, 1992

Brief Description: Changing provisions relating to negligent driving.

SPONSORS: House Committee on Judiciary (originally sponsored by Representatives Ludwig, Wynne, Orr and Rasmussen).

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; M. Kreidler, Madsen, and A. Smith.

Staff: Lidia Mori (786-7755)

Hearing Dates: March 26, 1991; April 2, 1991; February 19, 1992; February 28, 1992

BACKGROUND:

The crime of negligent driving involves "operation of a vehicle in such a manner as to endanger or be likely to endanger any persons or property." The only penalty prescribed for negligent driving is a fine of not more than \$250.

SUMMARY:

The crime of first-degree negligent driving is created. The crime consists of negligent driving while having consumed alcohol or drugs, but in an amount insufficient to constitute DWI.

The penalties for first-degree negligent driving include a fine of up to \$500 and a driver's license suspension of 30 days. No jail time may be imposed. Upon conviction, a person must attend alcohol information school and must undergo an alcoholism diagnostic evaluation. Based on the evaluation, the court may require the person to complete a treatment program. The court must stay the suspension of the person's driver's license on the condition that the person successfully completes alcohol information school and any court ordered treatment.

A conviction for first-degree negligent driving counts as a prior conviction for purposes of enhancing penalties for a subsequent DWI conviction.

Appropriation: none

Revenue: none

Fiscal Note: requested

SUMMARY OF PROPOSED SENATE AMENDMENT:

The Department of Licensing (DOL) is authorized to administratively suspend or revoke the driving privileges of any person arrested for DWI who has a breath/blood alcohol reading of 0.10 or greater. The definition of a test of a person's breath is included. The criteria for what constitutes driving while under the influence of intoxicating liquor is controlled by the standard set forth in statute.

A law enforcement officer must have reasonable grounds to believe the driver was operating a motor vehicle while under the influence of alcohol. The officer must warn the driver that the driving privilege will be revoked or denied if he/she refuses the test or that the driving privilege will be suspended, revoked or denied if the test is administered and the reading is 0.10 or greater.

If the test is refused or failed, the officer must confiscate the driver's license and issue a temporary license that is effective 12 hours after the time of arrest. It is valid for 45 days from the date of the arrest or until a hearing is held, whichever occurs first. The officer must provide the driver with information on his/her right to request a hearing to contest the suspension or revocation.

Upon receipt of the report indicating the driver refused the test, DOL is to issue a revocation. The first refusal in five years is a one-year revocation. A second or subsequent refusal in five years is a two-year revocation. The revocation is effective 30 days from the date of the arrest.

Upon receipt of the sworn report indicating the driver submitted to the test and the result of the test was 0.10 or more, DOL shall suspend, revoke or deny the person's driving privilege. The suspension will be for 90 days on a first offense, one year on a second offense, and two years on a third offense, to become effective 30 days from the date of arrest.

If the driver wants to contest the suspension or revocation, the person must submit in writing a request for a hearing within 10 days of the date of arrest. Upon receipt of the request for the hearing, DOL is to set a hearing date. The hearing is to be held in the county of arrest within 45 days of the date of arrest. If the suspension or revocation is sustained at the hearing, the driver has the right to file an appeal to the superior court in the county of arrest. The driver may seek a stay of the effective date of the suspension or revocation during the appeal.

Each person suspended or revoked under this act shall receive an alcohol evaluation and enroll in any recommended treatment program prior to reinstatement. Proof of financial responsibility is not required after a first suspension or for an occupational license. A person participating in an alcohol

or drug program may apply for a provisional driver's license. A person who refused to submit to a test of his or her breath or blood after being arrested for a DWI may not apply for a provisional driver's license.

The legislation authorizes a study to be conducted by the Washington Traffic Safety Commission to review the effectiveness of the act.

License reinstatement fees are increased from \$50 to \$100 to fund the new license suspension procedure.

TESTIMONY FOR:

This bill is at the request of the District Court Judges Association because they have seen too many DWI cases pled down to negligent driving as a routine procedure. Negligent driving currently involves minimal punishment. This bill will provide real sanctions for those serious cases for which a prosecutor would not be able to obtain a conviction for DWI.

TESTIMONY AGAINST:

This bill could dilute DWI enforcement. Currently, a prosecutor can negotiate a DWI down to a "slow negligent driving" when a defendant refuses to take a breathalyzer test, etc. This bill will take away flexibility.

TESTIFIED: PRO: Representative Curtis Ludwig; Representative Marlin Appelwick; Judge Wynne, District Court Judges Association; Carol Bender, WSAOIP; CON: Mark Thompson, Thurston County Prosecuting Attorney; Daniel Still, Tacoma City Attorney