

SENATE BILL 5067

State of Washington

52nd Legislature

1991 Regular Session

By Senators Nelson, Talmadge, Oke, Rasmussen, Bailey, Craswell, Roach, Thorsness, McCaslin, Johnson, Anderson and Conner.

Read first time January 17, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to changing the blood and breath alcohol standards
2 for intoxication; amending RCW 46.61.502, 46.61.504, 46.61.506, and
3 9.41.098; and reenacting and amending RCW 88.02.095.

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

5 **Sec. 1.** RCW 46.61.502 and 1987 c 373 s 2 are each amended to read
6 as follows:

7 A person is guilty of driving while under the influence of
8 intoxicating liquor or any drug if the person drives a vehicle within
9 this state while:

10 (1) The person has ((0.10)) 0.08 grams or more of alcohol per two
11 hundred ten liters of breath, as shown by analysis of the person's
12 breath made under RCW 46.61.506; or

1 (2) The person has ((~~0.10~~)) 0.08 percent or more by weight of
2 alcohol in the person's blood as shown by analysis of the person's
3 blood made under RCW 46.61.506; or

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

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

8 The fact that any person charged with a violation of this section
9 is or has been entitled to use such drug under the laws of this state
10 shall not constitute a defense against any charge of violating this
11 section.

12 **Sec. 2.** RCW 46.61.504 and 1987 c 373 s 3 are each amended to read
13 as follows:

14 A person is guilty of being in actual physical control of a motor
15 vehicle while under the influence of intoxicating liquor or any drug if
16 the person has actual physical control of a vehicle within this state
17 while:

18 (1) The person has ((~~0.10~~)) 0.08 grams or more of alcohol per two
19 hundred ten liters of breath, as shown by analysis of the person's
20 breath made under RCW 46.61.506; or

21 (2) The person has ((~~0.10~~)) 0.08 percent or more by weight of
22 alcohol in the person's blood as shown by analysis of the person's
23 blood made under RCW 46.61.506; or

24 (3) The person is under the influence of or affected by
25 intoxicating liquor or any drug; or

26 (4) The person is under the combined influence of or affected by
27 intoxicating liquor and any drug.

28 The fact that any person charged with a violation of this section
29 is or has been entitled to use such drug under the laws of this state

1 shall not constitute a defense against any charge of violating this
2 section. No person may be convicted under this section if, prior to
3 being pursued by a law enforcement officer, the person has moved the
4 vehicle safely off the roadway.

5 **Sec. 3.** RCW 46.61.506 and 1987 c 373 s 4 are each amended to read
6 as follows:

7 (1) Upon the trial of any civil or criminal action or proceeding
8 arising out of acts alleged to have been committed by any person while
9 driving or in actual physical control of a vehicle while under the
10 influence of intoxicating liquor or any drug, if the amount of alcohol
11 in the person's blood or breath at the time alleged as shown by
12 analysis of his blood or breath is less than ((0.10)) 0.08 percent by
13 weight of alcohol in his blood or ((0.10)) 0.08 grams of alcohol per
14 two hundred ten liters of the person's breath, it is evidence that may
15 be considered with other competent evidence in determining whether the
16 person was under the influence of intoxicating liquor or any drug.

17 (2) The breath analysis shall be based upon grams of alcohol per
18 two hundred ten liters of breath. The foregoing provisions of this
19 section shall not be construed as limiting the introduction of any
20 other competent evidence bearing upon the question whether the person
21 was under the influence of intoxicating liquor or any drug.

22 (3) Analysis of the person's blood or breath to be considered valid
23 under the provisions of this section or RCW 46.61.502 or 46.61.504
24 shall have been performed according to methods approved by the state
25 toxicologist and by an individual possessing a valid permit issued by
26 the state toxicologist for this purpose. The state toxicologist is
27 directed to approve satisfactory techniques or methods, to supervise
28 the examination of individuals to ascertain their qualifications and
29 competence to conduct such analyses, and to issue permits which shall

1 be subject to termination or revocation at the discretion of the state
2 toxicologist.

3 (4) When a blood test is administered under the provisions of RCW
4 46.20.308, the withdrawal of blood for the purpose of determining its
5 alcoholic content may be performed only by a physician, a registered
6 nurse, or a qualified technician. This limitation shall not apply to
7 the taking of breath specimens.

8 (5) The person tested may have a physician, or a qualified
9 technician, chemist, registered nurse, or other qualified person of his
10 own choosing administer one or more tests in addition to any
11 administered at the direction of a law enforcement officer. The
12 failure or inability to obtain an additional test by a person shall not
13 preclude the admission of evidence relating to the test or tests taken
14 at the direction of a law enforcement officer.

15 (6) Upon the request of the person who shall submit to a test or
16 tests at the request of a law enforcement officer, full information
17 concerning the test or tests shall be made available to him or his
18 attorney.

19 **Sec. 4.** RCW 88.02.095 and 1990 c 231 s 3 and 1990 c 31 s 1 are
20 each reenacted and amended to read as follows:

21 (1) It shall be unlawful for any person to operate a vessel in a
22 negligent manner. For the purpose of this section, to "operate in a
23 negligent manner" shall be construed to mean the operation of a vessel
24 in such manner as to endanger or be likely to endanger any persons or
25 property or to operate at a rate of speed greater than will permit the
26 operator in the exercise of reasonable care to bring the vessel to a
27 safe stop.

1 (2) A person is guilty of operating a vessel while under the
2 influence of intoxicating liquor or any drug if the person operates a
3 vessel within this state while:

4 (a) The person has ((0.10)) 0.08 grams or more of alcohol per two
5 hundred ten liters of breath, as shown by analysis of the person's
6 breath made under RCW 46.61.506; or

7 (b) The person has ((0.10)) 0.08 percent or more by weight of
8 alcohol in the person's blood, as shown by analysis of the person's
9 blood made under RCW 46.61.506; or

10 (c) The person is under the influence of or affected by
11 intoxicating liquor or any drug; or

12 (d) The person is under the combined influence of or affected by
13 intoxicating liquor and any drug.

14 The fact that any person charged with a violation of this section
15 is or has been entitled to use such drug under the laws of this state
16 shall not constitute a defense against any charge of violating this
17 section. A person cited under this subsection may upon request be
18 given a breath test for breath alcohol or may request to have a blood
19 sample taken for blood alcohol analysis. An arresting officer shall
20 administer field sobriety tests when circumstances permit.

21 (3) For the purposes of this section, "vessel" means any watercraft
22 used or capable of being used as a means of transportation on the
23 water, other than a seaplane.

24 (4) For the purpose of this section, "vessel operator" means a
25 person who is in actual physical control of a vessel.

26 (5) A violation of this section is a misdemeanor, punishable by up
27 to ninety days in jail and by a fine of not more than one thousand
28 dollars. In addition, the court may order the defendant to pay
29 restitution for any damages or injuries resulting from the offense.

1 **Sec. 5.** RCW 9.41.098 and 1989 c 222 s 8 are each amended to read
2 as follows:

3 (1) The superior courts and the courts of limited jurisdiction of
4 the state may order forfeiture of a firearm which is proven to be:

5 (a) Found concealed on a person not authorized by RCW 9.41.060 or
6 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute
7 defense to forfeiture if the person possessed a valid Washington
8 concealed pistol license within the preceding two years and has not
9 become ineligible for a concealed pistol license in the interim.
10 Before the firearm may be returned, the person must pay the past due
11 renewal fee and the current renewal fee;

12 (b) Commercially sold to any person without an application as
13 required by RCW 9.41.090;

14 (c) Found in the possession or under the control of a person at the
15 time the person committed or was arrested for committing a crime of
16 violence or a crime in which a firearm was used or displayed or a
17 felony violation of the uniform controlled substances act, chapter
18 69.50 RCW;

19 (d) Found concealed on a person who is in any place in which a
20 concealed pistol license is required, and who is under the influence of
21 any drug or under the influence of intoxicating liquor, having ((0.10))
22 0.08 grams or more of alcohol per two hundred ten liters of breath or
23 ((0.10)) 0.08 percent or more by weight of alcohol in the person's
24 blood, as shown by analysis of the person's breath, blood, or other
25 bodily substance;

26 (e) Found in the possession of a person prohibited from possessing
27 the firearm under RCW 9.41.040;

28 (f) Found in the possession of a person free on bail or personal
29 recognizance pending trial, appeal, or sentencing for a crime of
30 violence or a crime in which a firearm was used or displayed, except

1 that violations of Title 77 RCW shall not result in forfeiture under
2 this section;

3 (g) Found in the possession of a person found to have been mentally
4 incompetent while in possession of a firearm when apprehended or who is
5 thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

6 (h) Known to have been used or displayed by a person in the
7 violation of a proper written order of a court of general jurisdiction;
8 or

9 (i) Known to have been used in the commission of a crime of
10 violence or a crime in which a firearm was used or displayed or a
11 felony violation of the uniformed controlled substances act, chapter
12 69.50 RCW.

13 (2) Upon order of forfeiture, the court in its discretion shall
14 order destruction of any firearm that is illegal for any person to
15 possess. All firearms legal for citizen possession that are judicially
16 forfeited or forfeited due to failure to make a claim under RCW
17 63.32.010, 63.40.010, or 63.35.020 shall be submitted for auction to
18 commercial sellers once a year if the submitting agency has accumulated
19 at least ten firearms authorized for sale. Law enforcement agencies
20 may conduct joint auctions for the purpose of maximizing efficiency.
21 A maximum of ten percent of such firearms may be retained for use by
22 local law enforcement agencies and the Washington state patrol. Before
23 submission for auction, a court may temporarily retain forfeited
24 firearms if needed for evidence. The proceeds from any sale shall be
25 divided as follows: The local jurisdiction and the Washington state
26 patrol shall retain its costs, including actual costs of storage and
27 sale, and shall forward the remainder to the state department of
28 wildlife for use in its firearms training program pursuant to RCW
29 77.32.155.

1 If a firearm is delivered to a law enforcement agency and the
2 agency no longer requires use of the firearm, the agency shall dispose
3 of the firearm by auction as provided by this subsection. The public
4 auctioning agency shall, as a minimum, maintain a record of all
5 forfeited firearms by manufacturer, model, caliber, serial number, date
6 and circumstances of forfeiture, and final disposition. The records
7 shall be open to public inspection and copying.

8 (3) The court shall order the firearm returned to the owner upon a
9 showing that there is no probable cause to believe a violation of
10 subsection (1) of this section existed or the firearm was stolen from
11 the owner or the owner neither had knowledge of nor consented to the
12 act or omission involving the firearm which resulted in its forfeiture.

13 (4) A law enforcement officer of the state or of any county or
14 municipality may confiscate a firearm found to be in the possession of
15 a person under circumstances specified in subsection (1) of this
16 section. After confiscation, the firearm shall not be surrendered
17 except: (a) To the prosecuting attorney for use in subsequent legal
18 proceedings; (b) for disposition according to an order of a court
19 having jurisdiction as provided in subsection (1) of this section; or
20 (c) to the owner if the proceedings are dismissed or as directed in
21 subsection (3) of this section.