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**SUBSTITUTE SENATE BILL 5439**

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**State of Washington**

**52nd Legislature**

**1991 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators Nelson, Erwin, McMullen, Owen, Oke, A. Smith, Stratton and Thorsness).

Read first time March 6, 1991.

1 AN ACT Relating to driving violations; amending RCW 46.61.525 and  
2 46.61.515; and prescribing penalties.

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

4 **Sec. 1.** RCW 46.61.525 and 1979 ex.s. c 136 s 86 are each amended  
5 to read as follows:

6 (1) It ~~((shall be))~~ is unlawful for any person to operate a motor  
7 vehicle in a negligent manner. For the purpose of this section to  
8 "operate in a negligent manner" ~~((shall be construed to mean))~~ means  
9 the operation of a vehicle in such a manner as to endanger or be likely  
10 to endanger any persons or property~~((: PROVIDED HOWEVER, That any))~~.  
11 A person operating a motor vehicle on private property with the consent  
12 of the owner in a manner consistent with the owner's consent ~~((shall~~  
13 ~~not be))~~ is not guilty of negligent driving.

14 ~~((The offense of operating a vehicle in a negligent manner shall be~~  
15 ~~considered to be))~~ (2)(a) A person who operates a motor vehicle in a

1 negligent manner and while having consumed intoxicating liquor or any  
2 drug, but where the consumption is not sufficient to constitute a  
3 violation of RCW 46.61.502, is guilty of negligent driving in the first  
4 degree.

5 (b) Negligent driving in the first degree is a misdemeanor. Upon  
6 conviction of negligent driving in the first degree, a person may be  
7 punished by suspension of driving privileges for thirty days and a fine  
8 of up to five hundred dollars, but no imprisonment may be imposed.  
9 Whenever a person is convicted of negligent driving in the first  
10 degree, the clerk of the court in which the conviction occurred shall  
11 immediately notify the department of licensing of the conviction.

12 (c) The court shall order a diagnostic evaluation for any person  
13 convicted of negligent driving in the first degree. The evaluation and  
14 treatment recommendations shall be prepared by a treatment facility  
15 approved by the department of social and health services or a probation  
16 department qualified under RCW 46.61.516. A copy of the report shall  
17 be forwarded to the department of licensing. Based on the diagnostic  
18 evaluation the convicted person shall be required to complete a course  
19 in an information school approved by the department of social and  
20 health services or a more intensive treatment program as approved under  
21 chapter 70.96A RCW.

22 (d) The court shall suspend the thirty-day suspension of driving  
23 privileges if the convicted person is ordered to complete an  
24 information school or a more intensive treatment program. If the  
25 convicted person fails to successfully complete the school or program  
26 the court shall immediately notify the department of the failure. Upon  
27 receipt of such notice, the department shall suspend the person's  
28 privilege to drive for thirty days.

29 (3) A person who operates a motor vehicle in a negligent manner not  
30 amounting to negligent driving in the first degree is guilty of

1 negligent driving in the second degree. Negligent driving in the  
2 second degree is a lesser offense than, but included in, the offense of  
3 operating a vehicle in a reckless manner, and any person charged with  
4 operating a vehicle in a reckless manner may be convicted of the lesser  
5 offense of (~~operating a vehicle in a~~) negligent (~~manner~~) driving in  
6 the second degree. Any person violating (~~the provisions of~~) this  
7 (~~section will be~~) subsection is guilty of a misdemeanor: PROVIDED,  
8 That the director may not revoke any license under this (~~section~~)  
9 subsection, and such offense is not punishable by imprisonment or by a  
10 fine exceeding two hundred fifty dollars.

11 **Sec. 2.** RCW 46.61.515 and 1985 c 352 s 1 are each amended to read  
12 as follows:

13 (1) Every person who is convicted of a violation of RCW 46.61.502  
14 or 46.61.504 shall be punished by imprisonment for not less than  
15 twenty-four consecutive hours nor more than one year, and by a fine of  
16 not less than two hundred fifty dollars and not more than one thousand  
17 dollars. Unless the judge finds the person to be indigent, two hundred  
18 fifty dollars of the fine shall not be suspended or deferred. Twenty-  
19 four consecutive hours of the jail sentence shall not be suspended or  
20 deferred unless the judge finds that the imposition of the jail  
21 sentence will pose a risk to the defendant's physical or mental well-  
22 being. Whenever the mandatory jail sentence is suspended or deferred,  
23 the judge must state, in writing, the reason for granting the  
24 suspension or deferral and the facts upon which the suspension or  
25 deferral is based. (~~The court may impose conditions of probation that~~  
26 ~~may include nonrepetition, alcohol or drug treatment, supervised~~  
27 ~~probation, or other conditions that may be appropriate. The convicted~~  
28 ~~person shall, in addition, be required to complete a course in an~~  
29 ~~alcohol information school approved by the department of social and~~

1 ~~health services or more intensive treatment in a program approved by~~  
2 ~~the department of social and health services, as determined by the~~  
3 ~~court.)) The court shall order a diagnostic evaluation (~~and treatment~~  
4 ~~recommendation shall be prepared under the direction of the court by an~~  
5 ~~alcoholism agency)) for any person convicted under RCW 46.61.502 or  
6 46.61.504. The evaluation and treatment recommendations shall be  
7 prepared by a treatment facility approved by the department of social  
8 and health services or a (~~qualified~~) probation department (~~approved~~  
9 ~~by the department of social and health services~~) qualified under RCW  
10 46.61.516. A copy of the report shall be forwarded to the department  
11 of licensing. Based on the diagnostic evaluation(~~, the court shall~~  
12 ~~determine whether~~) the convicted person shall be required to complete  
13 a course in an (~~alcohol~~) information school approved by the  
14 department of social and health services or a more intensive treatment  
15 (~~in a~~) program as approved (~~by the department of social and health~~  
16 ~~services~~) under chapter 70.96A RCW. Standards for approval for  
17 alcohol treatment programs under this chapter shall be prescribed by  
18 rule under the administrative procedure act, chapter 34.05 RCW. The  
19 courts shall periodically review the costs of alcohol information  
20 schools and treatment programs within their jurisdictions.~~~~

21 (2) On a second or subsequent conviction for driving or being in  
22 physical control of a motor vehicle while under the influence of  
23 intoxicating liquor or drugs within a five-year period a person shall  
24 be punished by imprisonment for not less than seven days nor more than  
25 one year and by a fine of not less than five hundred dollars and not  
26 more than two thousand dollars. District courts and courts organized  
27 under chapter 35.20 RCW are authorized to impose such fine. Unless the  
28 judge finds the person to be indigent, five hundred dollars of the fine  
29 shall not be suspended or deferred. The jail sentence shall not be  
30 suspended or deferred unless the judge finds that the imposition of the

1 jail sentence will pose a risk to the defendant's physical or mental  
2 well-being. Whenever the mandatory jail sentence is suspended or  
3 deferred, the judge must state, in writing, the reason for granting the  
4 suspension or deferral and the facts upon which the suspension or  
5 deferral is based. If, at the time of a second or subsequent  
6 conviction, the driver is without a license or permit because of a  
7 previous suspension or revocation, the minimum mandatory sentence shall  
8 be ninety days in jail and a two hundred dollar fine. The penalty so  
9 imposed shall not be suspended or deferred. The person shall, in  
10 addition, be required to complete a diagnostic evaluation by ((an  
11 alcoholism agency)) a treatment facility approved by the department of  
12 social and health services or a ((qualified)) probation department  
13 ((approved by the department of social and health services)) qualified  
14 under RCW 46.61.516. The report shall be forwarded to the department  
15 of licensing. If the person is found to have an alcohol or drug  
16 problem requiring treatment, the person shall complete treatment at an  
17 approved ((alcoholism)) treatment facility ((or approved drug treatment  
18 center)).

19 In addition to any nonsuspendable and nondeferrable jail sentence  
20 required by this subsection, the court shall sentence a person to a  
21 term of imprisonment not exceeding one hundred eighty days and shall  
22 suspend but shall not defer the sentence for a period not exceeding two  
23 years. ((The suspension of the sentence may be conditioned upon  
24 nonrepetition, alcohol or drug treatment, supervised probation, or  
25 other conditions that may be appropriate. The sentence may be imposed  
26 in whole or in part upon violation of a condition of suspension during  
27 the suspension period.))

28 (3) The license or permit to drive or any nonresident privilege of  
29 any person convicted of driving or being in physical control of a motor

1 vehicle while under the influence of intoxicating liquor or drugs  
2 shall:

3 (a) On the first conviction under either offense, be suspended by  
4 the department until the person reaches age nineteen or for ninety  
5 days, whichever is longer. The department of licensing shall determine  
6 the person's eligibility for licensing based upon the reports provided  
7 by the designated (~~alcoholism agency~~) treatment facility or probation  
8 department and shall deny reinstatement until enrollment and  
9 participation in an approved program has been established and the  
10 person is otherwise qualified;

11 (b) On a second conviction under either offense within a five-year  
12 period, be revoked by the department for one year. The department of  
13 licensing shall determine the person's eligibility for licensing based  
14 upon the reports provided by the designated (~~alcoholism agency~~)  
15 treatment facility or probation department and shall deny reinstatement  
16 until satisfactory progress in an approved program has been established  
17 and the person is otherwise qualified;

18 (c) On a third or subsequent conviction of driving or being in  
19 physical control of a motor vehicle while under the influence of  
20 intoxicating liquor or drugs, vehicular homicide, or vehicular assault,  
21 or any combination thereof within a five-year period, be revoked by the  
22 department for two years.

23 (4) In any case provided for in this section, where a driver's  
24 license is to be revoked or suspended, the revocation or suspension  
25 shall be stayed and shall not take effect until after the determination  
26 of any appeal from the conviction which may lawfully be taken, but in  
27 case the conviction is sustained on appeal the revocation or suspension  
28 takes effect as of the date that the conviction becomes effective for  
29 other purposes.