

1 **SSB 5141** - H AMDS TO H COMM AMD (H2803.1) **688 FAILED 4/7/95**

2 By Representative Foreman and others

3 On page 18, after line 31, insert the following:

4 "Sec. 6. RCW 46.61.502 and 1994 c 275 ú 2 are each amended  
5 to read as follows:

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

9 (a) And the person has, within two hours after driving, an  
10 alcohol concentration of ((0.10)) 0.08 or higher as shown by  
11 analysis of the person's breath or blood made under RCW  
12 46.61.506; or

13 (b) While the person is under the influence of or affected  
14 by intoxicating liquor or any drug; or

15 (c) While the person is under the combined influence of or  
16 affected by intoxicating liquor and any drug.

17 (2) The fact that a person charged with a violation of this  
18 section is or has been entitled to use a drug under the laws of  
19 this state shall not constitute a defense against a charge of  
20 violating this section.

21 (3) It is an affirmative defense to a violation of  
22 subsection (1)(a) of this section which the defendant must prove  
23 by a preponderance of the evidence that the defendant consumed a  
24 sufficient quantity of alcohol after the time of driving and  
25 before the administration of an analysis of the person's breath  
26 or blood to cause the defendant's alcohol concentration to be  
27 ((0.10)) 0.08 or more within two hours after driving. The court  
28 shall not admit evidence of this defense unless the defendant  
29 notifies the prosecution prior to the omnibus or pretrial hearing  
30 in the case of the defendant's intent to assert the affirmative  
31 defense.

1 (4) Analyses of blood or breath samples obtained more than  
2 two hours after the alleged driving may be used as evidence that  
3 within two hours of the alleged driving, a person had an alcohol  
4 concentration of ((0.10)) 0.08 or more in violation of subsection  
5 (1)(a) of this section, and in any case in which the analysis  
6 shows an alcohol concentration above 0.00 may be used as evidence  
7 that a person was under the influence of or affected by  
8 intoxicating liquor or any drug in violation of subsection (1)  
9 (b) or (c) of this section.

10 (5) A violation of this section is a gross misdemeanor.

11 **Sec. 7.** RCW 46.61.504 and 1994 c 275 ú 3 are each amended to  
12 read as follows:

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

17 (a) And the person has, within two hours after being in  
18 actual physical control of the vehicle, an alcohol concentration  
19 of ((0.10)) 0.08 or higher as shown by analysis of the person's  
20 breath or blood made under RCW 46.61.506; or

21 (b) While the person is under the influence of or affected  
22 by intoxicating liquor or any drug; or

23 (c) While the person is under the combined influence of or  
24 affected by intoxicating liquor and any drug.

25 (2) The fact that a person charged with a violation of this  
26 section is or has been entitled to use a drug under the laws of  
27 this state does not constitute a defense against any charge of  
28 violating this section. No person may be convicted under this  
29 section if, prior to being pursued by a law enforcement officer,  
30 the person has moved the vehicle safely off the roadway.

31 (3) It is an affirmative defense to a violation of  
32 subsection (1)(a) of this section which the defendant must prove  
33 by a preponderance of the evidence that the defendant consumed a

1 sufficient quantity of alcohol after the time of being in actual  
2 physical control of the vehicle and before the administration of  
3 an analysis of the person's breath or blood to cause the  
4 defendant's alcohol concentration to be (~~0.10~~) 0.08 or more  
5 within two hours after being in such control. The court shall  
6 not admit evidence of this defense unless the defendant notifies  
7 the prosecution prior to the omnibus or pretrial hearing in the  
8 case of the defendant's intent to assert the affirmative defense.

9 (4) Analyses of blood or breath samples obtained more than  
10 two hours after the alleged being in actual physical control of a  
11 vehicle may be used as evidence that within two hours of the  
12 alleged being in such control, a person had an alcohol  
13 concentration of (~~0.10~~) 0.08 or more in violation of subsection  
14 (1)(a) of this section, and in any case in which the analysis  
15 shows an alcohol concentration above 0.00 may be used as evidence  
16 that a person was under the influence of or affected by  
17 intoxicating liquor or any drug in violation of subsection (1)  
18 (b) or (c) of this section.

19 (5) A violation of this section is a gross misdemeanor."

20 On page 2, line 24, strike "0.10" and insert "0.08"

21 On page 3, line 19, strike "0.10" and insert "0.08"

22 On page 4, line 19, strike "0.10" and insert "0.08"

23 On page 6, line 3, strike "0.10" and insert "0.08"

24 On page 11, line 23, strike "0.10" and insert "0.08"

25 On page 17, line 30, strike "0.08" and insert "0.04"

26 On page 32, line 28, strike "0.10" and insert "~~(0.10)~~ 0.08"

27 Renumber the remaining sections, correct internal references  
and correct the title accordingly.

**EFFECT:** Lowers the BAC standard for a per se DUI offense  
from 0.10 to 0.08, and lowers the probationary standard from  
0.08 to 0.04.