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SENATE BILL 6624

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State of Washington

56th Legislature

2000 Regular Session

By Senators Roach, Heavey, Stevens, Johnson, Honeyford, Zarelli,  
Benton, Swecker, Hale and Rasmussen

Read first time 01/20/2000. Referred to Committee on Judiciary.

1 AN ACT Relating to driving under the influence; amending RCW  
2 46.61.502 and 46.61.504; and reenacting and amending RCW 46.61.503.

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

4 **Sec. 1.** RCW 46.61.502 and 1998 c 213 s 3 are each amended to read  
5 as follows:

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

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

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

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

16 (d) While the person is under the influence of any chemical,  
17 poison, organic solvent, or any compound or a combination of these to  
18 a degree which renders the person incapable of driving safely.

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

5 (3) It is an affirmative defense to a violation of subsection  
6 (1)(a) of this section which the defendant must prove by a  
7 preponderance of the evidence that the defendant consumed a sufficient  
8 quantity of alcohol after the time of driving and before the  
9 administration of an analysis of the person's breath or blood to cause  
10 the defendant's alcohol concentration to be 0.08 or more within two  
11 hours after driving. The court shall not admit evidence of this  
12 defense unless the defendant notifies the prosecution prior to the  
13 omnibus or pretrial hearing in the case of the defendant's intent to  
14 assert the affirmative defense.

15 (4) Analyses of blood or breath samples obtained more than two  
16 hours after the alleged driving may be used as evidence that within two  
17 hours of the alleged driving, a person had an alcohol concentration of  
18 0.08 or more in violation of subsection (1)(a) of this section, and in  
19 any case in which the analysis shows an alcohol concentration above  
20 0.00 may be used as evidence that a person was under the influence of  
21 or affected by intoxicating liquor or any drug in violation of  
22 subsection (1)(b) or (c) of this section.

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

24 **Sec. 2.** RCW 46.61.503 and 1998 c 213 s 4, 1998 c 207 s 5, and 1998  
25 c 41 s 8 are each reenacted and amended to read as follows:

26 (1) Notwithstanding any other provision of this title, a person is  
27 guilty of driving or being in physical control of a motor vehicle after  
28 consuming alcohol or any chemical, poison, organic solvent, or any  
29 compound or a combination of these to a degree which renders the person  
30 incapable of driving safely if the person operates or is in physical  
31 control of a motor vehicle within this state and the person:

32 (a) Is under the age of twenty-one;

33 (b) Has, within two hours after operating or being in physical  
34 control of the motor vehicle, an alcohol concentration of at least 0.02  
35 but less than the concentration specified in RCW 46.61.502, as shown by  
36 analysis of the person's breath or blood made under RCW 46.61.506; or

1       (c) Is under the influence of any chemical, poison, organic  
2 solvent, or any compound or a combination of these to a degree which  
3 renders the person incapable of driving safely.

4       (2) It is an affirmative defense to a violation of subsection (1)  
5 of this section which the defendant must prove by a preponderance of  
6 the evidence that the defendant consumed a sufficient quantity of  
7 alcohol after the time of driving or being in physical control and  
8 before the administration of an analysis of the person's breath or  
9 blood to cause the defendant's alcohol concentration to be in violation  
10 of subsection (1) of this section within two hours after driving or  
11 being in physical control. The court shall not admit evidence of this  
12 defense unless the defendant notifies the prosecution prior to the  
13 earlier of: (a) Seven days prior to trial; or (b) the omnibus or  
14 pretrial hearing in the case of the defendant's intent to assert the  
15 affirmative defense.

16       (3) Analyses of blood or breath samples obtained more than two  
17 hours after the alleged driving or being in physical control may be  
18 used as evidence that within two hours of the alleged driving or being  
19 in physical control, a person had an alcohol concentration in violation  
20 of subsection (1) of this section.

21       (4) A violation of this section is a misdemeanor.

22       **Sec. 3.** RCW 46.61.504 and 1998 c 213 s 5 are each amended to read  
23 as follows:

24       (1) A person is guilty of being in actual physical control of a  
25 motor vehicle while under the influence (~~(of intoxicating liquor or any~~  
26 ~~drug)) if the person has actual physical control of a vehicle within~~  
27 this state:

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

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

34       (c) While the person is under the combined influence of or affected  
35 by intoxicating liquor and any drug; or

36       (d) While the person is under the influence of any chemical,  
37 poison, organic solvent, or any compound or a combination of these to  
38 a degree which renders the person incapable of driving safely.

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

7 (3) It is an affirmative defense to a violation of subsection  
8 (1)(a) of this section which the defendant must prove by a  
9 preponderance of the evidence that the defendant consumed a sufficient  
10 quantity of alcohol after the time of being in actual physical control  
11 of the vehicle and before the administration of an analysis of the  
12 person's breath or blood to cause the defendant's alcohol concentration  
13 to be 0.08 or more within two hours after being in such control. The  
14 court shall not admit evidence of this defense unless the defendant  
15 notifies the prosecution prior to the omnibus or pretrial hearing in  
16 the case of the defendant's intent to assert the affirmative defense.

17 (4) Analyses of blood or breath samples obtained more than two  
18 hours after the alleged being in actual physical control of a vehicle  
19 may be used as evidence that within two hours of the alleged being in  
20 such control, a person had an alcohol concentration of 0.08 or more in  
21 violation of subsection (1)(a) of this section, and in any case in  
22 which the analysis shows an alcohol concentration above 0.00 may be  
23 used as evidence that a person was under the influence of or affected  
24 by intoxicating liquor or any drug in violation of subsection (1)(b) or  
25 (c) of this section.

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

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