
SENATE BILL 5523

State of Washington

58th Legislature

2003 Regular Session

By Senators Oke and Kline

Read first time 01/28/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to operation of vehicles or vessels after taking a
2 controlled substance; amending RCW 46.61.502, 46.61.504, 79A.60.040,
3 and 90.56.540; reenacting and amending RCW 46.20.308 and 46.25.090; and
4 prescribing penalties.

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

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

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

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

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

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

18 (d) And the person has any schedule I or II controlled substance or

1 any metabolite or analog of any schedule I or II controlled substance
2 in his or her body.

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

7 (3)(a)(i) 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 driving and before the
11 administration of an analysis of the person's breath or blood to cause
12 the defendant's alcohol concentration to be 0.08 or more within two
13 hours after driving.

14 (ii) It is an affirmative defense to a violation of subsection
15 (1)(d) of this section which the defendant must prove by a
16 preponderance of the evidence that the controlled substance was being
17 used according to a valid prescription including the prescription
18 directions and warnings.

19 (b) The court shall not admit evidence of ((this)) the defenses
20 under this subsection unless the defendant notifies the prosecution
21 prior to the omnibus or pretrial hearing in the case of the defendant's
22 intent to assert the affirmative defense.

23 (4) Analyses of blood or breath samples obtained more than two
24 hours after the alleged driving may be used as evidence that within two
25 hours of the alleged driving, a person had an alcohol concentration of
26 0.08 or more in violation of subsection (1)(a) of this section, and in
27 any case in which the analysis shows an alcohol concentration above
28 0.00 may be used as evidence that a person was under the influence of
29 or affected by intoxicating liquor or any drug in violation of
30 subsection (1)(b) or (c) of this section.

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

32 **Sec. 2.** RCW 46.61.504 and 1998 c 213 s 5 are each amended to read
33 as follows:

34 (1) A person is guilty of being in actual physical control of a
35 motor vehicle while under the influence of intoxicating liquor or any
36 drug if the person has actual physical control of a vehicle within this
37 state:

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

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

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

9 (d) And the person has any schedule I or II controlled substance or
10 any metabolite or analog of any schedule I or II controlled substance
11 in his or her body.

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

18 (3)(a)(i) It is an affirmative defense to a violation of subsection
19 (1)(a) of this section which the defendant must prove by a
20 preponderance of the evidence that the defendant consumed a sufficient
21 quantity of alcohol after the time of being in actual physical control
22 of the vehicle and before the administration of an analysis of the
23 person's breath or blood to cause the defendant's alcohol concentration
24 to be 0.08 or more within two hours after being in such control.

25 (ii) It is an affirmative defense to a violation of subsection
26 (1)(d) of this section which the defendant must prove by a
27 preponderance of the evidence that the controlled substance was being
28 used according to a valid prescription including the prescription
29 directions and warnings.

30 (b) The court shall not admit evidence of ((this)) the defenses
31 under this subsection unless the defendant notifies the prosecution
32 prior to the omnibus or pretrial hearing in the case of the defendant's
33 intent to assert the affirmative defense.

34 (4) Analyses of blood or breath samples obtained more than two
35 hours after the alleged being in actual physical control of a vehicle
36 may be used as evidence that within two hours of the alleged being in
37 such control, a person had an alcohol concentration of 0.08 or more in
38 violation of subsection (1)(a) of this section, and in any case in

1 which the analysis shows an alcohol concentration above 0.00 may be
2 used as evidence that a person was under the influence of or affected
3 by intoxicating liquor or any drug in violation of subsection (1)(b) or
4 (c) of this section.

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

6 **Sec. 3.** RCW 46.20.308 and 1999 c 331 s 2 and 1999 c 274 s 2 are
7 each reenacted and amended to read as follows:

8 (1) Any person who operates a motor vehicle within this state is
9 deemed to have given consent, subject to the provisions of RCW
10 46.61.506, to a test or tests of his or her breath or blood for the
11 purpose of determining the alcohol concentration or presence of any
12 drug in his or her breath or blood if arrested for any offense where,
13 at the time of the arrest, the arresting officer has reasonable grounds
14 to believe the person: (a) Had been driving or was in actual physical
15 control of a motor vehicle while under the influence of intoxicating
16 liquor or any drug; (b) had been driving or was in actual physical
17 control of a motor vehicle with any schedule I or II controlled
18 substance or any metabolite or analog of any schedule I or II
19 controlled substance in his or her body and the vehicle was involved in
20 an accident resulting in the injury to or death of any person or damage
21 to a vehicle or other property; or (c) was in violation of RCW
22 46.61.503.

23 (2) The test or tests of breath shall be administered at the
24 direction of a law enforcement officer having reasonable grounds to
25 believe the person to have been driving or in actual physical control
26 of a motor vehicle within this state while under the influence of
27 intoxicating liquor or any drug or the person to have been driving or
28 in actual physical control of a motor vehicle while having alcohol in
29 a concentration in violation of RCW 46.61.503 in his or her system and
30 being under the age of twenty-one. However, in those instances where
31 the person is incapable due to physical injury, physical incapacity, or
32 other physical limitation, of providing a breath sample or where the
33 person is being treated in a hospital, clinic, doctor's office,
34 emergency medical vehicle, ambulance, or other similar facility in
35 which a breath testing instrument is not present or where the officer
36 has reasonable grounds to believe that the person is under the
37 influence of a drug or the person has any schedule I or II controlled

1 substance or any metabolite or analog of any schedule I or II
2 controlled substance in his or her body and the vehicle was involved in
3 an accident resulting in the injury to or death of any person or damage
4 to a vehicle or other property, a blood test shall be administered by
5 a qualified person as provided in RCW 46.61.506(4). The officer shall
6 inform the person of his or her right to refuse the breath or blood
7 test, and of his or her right to have additional tests administered by
8 any qualified person of his or her choosing as provided in RCW
9 46.61.506. The officer shall warn the driver that:

10 (a) His or her license, permit, or privilege to drive will be
11 revoked or denied if he or she refuses to submit to the test;

12 (b) His or her license, permit, or privilege to drive will be
13 suspended, revoked, or denied if the test is administered and the test
14 indicates the alcohol concentration of the person's breath or blood is
15 0.08 or more or the person has any schedule I or II controlled
16 substance or any metabolite or analog of any schedule I or II
17 controlled substance in his or her body, in the case of a person age
18 twenty-one or over, or in violation of RCW 46.61.502, 46.61.503, or
19 46.61.504 in the case of a person under age twenty-one; and

20 (c) His or her refusal to take the test may be used in a criminal
21 trial.

22 (3) Except as provided in this section, the test administered shall
23 be of the breath only. If an individual is unconscious or is under
24 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
25 or vehicular assault as provided in RCW 46.61.522, or if an individual
26 is under arrest for ~~((the crime of driving while under the influence of~~
27 ~~intoxicating liquor or drugs as provided in))~~ a violation of RCW
28 46.61.502, which arrest results from an accident in which there has
29 been serious bodily injury to another person, a breath or blood test
30 may be administered without the consent of the individual so arrested.

31 (4) Any person who is dead, unconscious, or who is otherwise in a
32 condition rendering him or her incapable of refusal, shall be deemed
33 not to have withdrawn the consent provided by subsection (1) of this
34 section and the test or tests may be administered, subject to the
35 provisions of RCW 46.61.506, and the person shall be deemed to have
36 received the warnings required under subsection (2) of this section.

37 (5) If, following his or her arrest and receipt of warnings under
38 subsection (2) of this section, the person arrested refuses upon the

1 request of a law enforcement officer to submit to a test or tests of
2 his or her breath or blood, no test shall be given except as authorized
3 under subsection (3) or (4) of this section.

4 (6) If, after arrest and after the other applicable conditions and
5 requirements of this section have been satisfied, a test or tests of
6 the person's blood or breath is administered and the test results
7 indicate that the alcohol concentration of the person's breath or blood
8 is 0.08 or more if the person is age twenty-one or over, or is in
9 violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is
10 under the age of twenty-one, or the person has any schedule I or II
11 controlled substance or any metabolite or analog of any schedule I or
12 II controlled substance in his or her body, or the person refuses to
13 submit to a test, the arresting officer or other law enforcement
14 officer at whose direction any test has been given, or the department,
15 where applicable, if the arrest results in a test of the person's
16 blood, shall:

17 (a) Serve notice in writing on the person on behalf of the
18 department of its intention to suspend, revoke, or deny the person's
19 license, permit, or privilege to drive as required by subsection (7) of
20 this section;

21 (b) Serve notice in writing on the person on behalf of the
22 department of his or her right to a hearing, specifying the steps he or
23 she must take to obtain a hearing as provided by subsection (8) of this
24 section;

25 (c) Mark the person's Washington state driver's license or permit
26 to drive, if any, in a manner authorized by the department;

27 (d) Serve notice in writing that the marked license or permit, if
28 any, is a temporary license that is valid for sixty days from the date
29 of arrest or from the date notice has been given in the event notice is
30 given by the department following a blood test, or until the
31 suspension, revocation, or denial of the person's license, permit, or
32 privilege to drive is sustained at a hearing pursuant to subsection (8)
33 of this section, whichever occurs first. No temporary license is valid
34 to any greater degree than the license or permit that it replaces; and

35 (e) Immediately notify the department of the arrest and transmit to
36 the department within seventy-two hours, except as delayed as the
37 result of a blood test, a sworn report or report under a declaration
38 authorized by RCW 9A.72.085 that states:

1 (i) That the officer had reasonable grounds to believe the arrested
2 person had been driving or was in actual physical control of a motor
3 vehicle within this state while under the influence of intoxicating
4 liquor or drugs, or both, or was under the age of twenty-one years and
5 had been driving or was in actual physical control of a motor vehicle
6 while having an alcohol concentration in violation of RCW 46.61.503, or
7 the person had any schedule I or II controlled substance or any
8 metabolite or analog of any schedule I or II controlled substance in
9 his or her body;

10 (ii) That after receipt of the warnings required by subsection (2)
11 of this section the person refused to submit to a test of his or her
12 blood or breath, or a test was administered and the results indicated
13 that the alcohol concentration of the person's breath or blood was 0.08
14 or more if the person is age twenty-one or over, or was in violation of
15 RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age
16 of twenty-one, or the person had any schedule I or II controlled
17 substance or any metabolite or analog of any schedule I or II
18 controlled substance in his or her body; and

19 (iii) Any other information that the director may require by rule.

20 (7) The department of licensing, upon the receipt of a sworn report
21 or report under a declaration authorized by RCW 9A.72.085 under
22 subsection (6)(e) of this section, shall suspend, revoke, or deny the
23 person's license, permit, or privilege to drive or any nonresident
24 operating privilege, as provided in RCW 46.20.3101, such suspension,
25 revocation, or denial to be effective beginning sixty days from the
26 date of arrest or from the date notice has been given in the event
27 notice is given by the department following a blood test, or when
28 sustained at a hearing pursuant to subsection (8) of this section,
29 whichever occurs first.

30 (8) A person receiving notification under subsection (6)(b) of this
31 section may, within thirty days after the notice has been given,
32 request in writing a formal hearing before the department. The person
33 shall pay a fee of one hundred dollars as part of the request. If the
34 request is mailed, it must be postmarked within thirty days after
35 receipt of the notification. Upon timely receipt of such a request for
36 a formal hearing, including receipt of the required one hundred dollar
37 fee, the department shall afford the person an opportunity for a
38 hearing. The department may waive the required one hundred dollar fee

1 if the person is an indigent as defined in RCW 10.101.010. Except as
2 otherwise provided in this section, the hearing is subject to and shall
3 be scheduled and conducted in accordance with RCW 46.20.329 and
4 46.20.332. The hearing shall be conducted in the county of the arrest,
5 except that all or part of the hearing may, at the discretion of the
6 department, be conducted by telephone or other electronic means. The
7 hearing shall be held within sixty days following the arrest or
8 following the date notice has been given in the event notice is given
9 by the department following a blood test, unless otherwise agreed to by
10 the department and the person, in which case the action by the
11 department shall be stayed, and any valid temporary license marked
12 under subsection (6)(c) of this section extended, if the person is
13 otherwise eligible for licensing. For the purposes of this section,
14 the scope of the hearing shall cover the issues of whether a law
15 enforcement officer had reasonable grounds to believe the person had
16 been driving or was in actual physical control of a motor vehicle
17 within this state while under the influence of intoxicating liquor or
18 any drug or had been driving or was in actual physical control of a
19 motor vehicle within this state while having alcohol in his or her
20 system in a concentration in violation of RCW 46.61.503 and was under
21 the age of twenty-one, or the person had any schedule I or II
22 controlled substance or any metabolite or analog of any schedule I or
23 II controlled substance in his or her body, whether the person was
24 placed under arrest, and (a) whether the person refused to submit to
25 the test or tests upon request of the officer after having been
26 informed that such refusal would result in the revocation of the
27 person's license, permit, or privilege to drive, or (b) if a test or
28 tests were administered, whether the applicable requirements of this
29 section were satisfied before the administration of the test or tests,
30 whether the person submitted to the test or tests, or whether a test
31 was administered without express consent as permitted under this
32 section, and whether the test or tests indicated that the alcohol
33 concentration of the person's breath or blood was 0.08 or more if the
34 person was age twenty-one or over at the time of the arrest, or was in
35 violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person was
36 under the age of twenty-one at the time of the arrest, or the person
37 had any schedule I or II controlled substance or any metabolite or
38 analog of any schedule I or II controlled substance in his or her body.

1 The sworn report or report under a declaration authorized by RCW
2 9A.72.085 submitted by a law enforcement officer is prima facie
3 evidence that the officer had reasonable grounds to believe the person
4 had been driving or was in actual physical control of a motor vehicle
5 within this state while under the influence of intoxicating liquor or
6 drugs, or both, or the person had been driving or was in actual
7 physical control of a motor vehicle within this state while having
8 alcohol in his or her system in a concentration in violation of RCW
9 46.61.503 and was under the age of twenty-one, or the person had any
10 schedule I or II controlled substance or any metabolite or analog of
11 any schedule I or II controlled substance in his or her body and that
12 the officer complied with the requirements of this section.

13 A hearing officer shall conduct the hearing, may issue subpoenas
14 for the attendance of witnesses and the production of documents, and
15 shall administer oaths to witnesses. The hearing officer shall not
16 issue a subpoena for the attendance of a witness at the request of the
17 person unless the request is accompanied by the fee required by RCW
18 5.56.010 for a witness in district court. The sworn report or report
19 under a declaration authorized by RCW 9A.72.085 of the law enforcement
20 officer and any other evidence accompanying the report shall be
21 admissible without further evidentiary foundation and the
22 certifications authorized by the criminal rules for courts of limited
23 jurisdiction shall be admissible without further evidentiary
24 foundation. The person may be represented by counsel, may question
25 witnesses, may present evidence, and may testify. The department shall
26 order that the suspension, revocation, or denial either be rescinded or
27 sustained.

28 (9) If the suspension, revocation, or denial is sustained after
29 such a hearing, the person whose license, privilege, or permit is
30 suspended, revoked, or denied has the right to file a petition in the
31 superior court of the county of arrest to review the final order of
32 revocation by the department in the same manner as an appeal from a
33 decision of a court of limited jurisdiction. Notice of appeal must be
34 filed within thirty days after the date the final order is served or
35 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
36 1.1, or other statutes or rules referencing de novo review, the appeal
37 shall be limited to a review of the record of the administrative
38 hearing. The appellant must pay the costs associated with obtaining

1 the record of the hearing before the hearing officer. The filing of
2 the appeal does not stay the effective date of the suspension,
3 revocation, or denial. A petition filed under this subsection must
4 include the petitioner's grounds for requesting review. Upon granting
5 petitioner's request for review, the court shall review the
6 department's final order of suspension, revocation, or denial as
7 expeditiously as possible. The review must be limited to a
8 determination of whether the department has committed any errors of
9 law. The superior court shall accept those factual determinations
10 supported by substantial evidence in the record: (a) That were
11 expressly made by the department; or (b) that may reasonably be
12 inferred from the final order of the department. The superior court
13 may reverse, affirm, or modify the decision of the department or remand
14 the case back to the department for further proceedings. The decision
15 of the superior court must be in writing and filed in the clerk's
16 office with the other papers in the case. The court shall state the
17 reasons for the decision. If judicial relief is sought for a stay or
18 other temporary remedy from the department's action, the court shall
19 not grant such relief unless the court finds that the appellant is
20 likely to prevail in the appeal and that without a stay the appellant
21 will suffer irreparable injury. If the court stays the suspension,
22 revocation, or denial it may impose conditions on such stay.

23 (10) If a person whose driver's license, permit, or privilege to
24 drive has been or will be suspended, revoked, or denied under
25 subsection (7) of this section, other than as a result of a breath or
26 blood test refusal, and who has not committed an offense for which he
27 or she was granted a deferred prosecution under chapter 10.05 RCW,
28 petitions a court for a deferred prosecution on criminal charges
29 arising out of the arrest for which action has been or will be taken
30 under subsection (7) of this section, the court may direct the
31 department to stay any actual or proposed suspension, revocation, or
32 denial for at least forty-five days but not more than ninety days. If
33 the court stays the suspension, revocation, or denial, it may impose
34 conditions on such stay. If the person is otherwise eligible for
35 licensing, the department shall issue a temporary license, or extend
36 any valid temporary license marked under subsection (6) of this
37 section, for the period of the stay. If a deferred prosecution
38 treatment plan is not recommended in the report made under RCW

1 10.05.050, or if treatment is rejected by the court, or if the person
2 declines to accept an offered treatment plan, or if the person violates
3 any condition imposed by the court, then the court shall immediately
4 direct the department to cancel the stay and any temporary marked
5 license or extension of a temporary license issued under this
6 subsection.

7 A suspension, revocation, or denial imposed under this section,
8 other than as a result of a breath or blood test refusal, shall be
9 stayed if the person is accepted for deferred prosecution as provided
10 in chapter 10.05 RCW for the incident upon which the suspension,
11 revocation, or denial is based. If the deferred prosecution is
12 terminated, the stay shall be lifted and the suspension, revocation, or
13 denial reinstated. If the deferred prosecution is completed, the stay
14 shall be lifted and the suspension, revocation, or denial canceled.

15 (11) When it has been finally determined under the procedures of
16 this section that a nonresident's privilege to operate a motor vehicle
17 in this state has been suspended, revoked, or denied, the department
18 shall give information in writing of the action taken to the motor
19 vehicle administrator of the state of the person's residence and of any
20 state in which he or she has a license.

21 **Sec. 4.** RCW 46.25.090 and 2002 c 272 s 3 and 2002 c 193 s 1 are
22 each reenacted and amended to read as follows:

23 (1) A person is disqualified from driving a commercial motor
24 vehicle for a period of not less than one year if a report has been
25 received by the department pursuant to RCW 46.25.120, or if the person
26 has been convicted of a first violation, within this or any other
27 jurisdiction, of:

28 (a) Driving a commercial motor vehicle under the influence of
29 alcohol or any drug;

30 (b) Driving a commercial motor vehicle while the alcohol
31 concentration in the person's system is 0.04 or more, or with any
32 schedule I or II controlled substance or any metabolite or analog of
33 any schedule I or II controlled substance in his or her body, as
34 determined by any testing methods approved by law in this state or any
35 other state or jurisdiction;

36 (c) Leaving the scene of an accident involving a commercial motor
37 vehicle driven by the person;

1 (d) Using a commercial motor vehicle in the commission of a felony;

2 (e) Refusing to submit to a test to determine the driver's alcohol
3 concentration while driving a motor vehicle.

4 If any of the violations set forth in this subsection occurred
5 while transporting a hazardous material required to be identified by a
6 placard, the person is disqualified for a period of not less than three
7 years.

8 (2) A person is disqualified for life if it has been determined
9 that the person has committed or has been convicted of two or more
10 violations of any of the offenses specified in subsection (1) of this
11 section, or any combination of those offenses, arising from two or more
12 separate incidents. Only offenses committed after October 1, 1989, may
13 be considered in applying this subsection.

14 (3) The department may adopt rules, in accordance with federal
15 regulations, establishing guidelines, including conditions, under which
16 a disqualification for life under subsection (2) of this section may be
17 reduced to a period of not less than ten years.

18 (4) A person is disqualified from driving a commercial motor
19 vehicle for life who uses a commercial motor vehicle in the commission
20 of a felony involving the manufacture, distribution, or dispensing of
21 a controlled substance, as defined by chapter 69.50 RCW, or possession
22 with intent to manufacture, distribute, or dispense a controlled
23 substance, as defined by chapter 69.50 RCW.

24 (5) A person is disqualified from driving a commercial motor
25 vehicle for a period of not less than sixty days if convicted of or
26 found to have committed two serious traffic violations, or one hundred
27 twenty days if convicted of or found to have committed three serious
28 traffic violations, committed in a commercial motor vehicle arising
29 from separate incidents occurring within a three-year period.

30 (6) A person is disqualified from driving a commercial motor
31 vehicle for a period of:

32 (a) Not less than ninety days nor more than one year if convicted
33 of or found to have committed a first violation of an out-of-service
34 order while driving a commercial vehicle;

35 (b) Not less than one year nor more than five years if, during a
36 ten-year period, the person is convicted of or is found to have
37 committed two violations of out-of-service orders while driving a
38 commercial vehicle in separate incidents;

1 (c) Not less than three years nor more than five years if, during
2 a ten-year period, the person is convicted of or is found to have
3 committed three or more violations of out-of-service orders while
4 driving commercial vehicles in separate incidents;

5 (d) Not less than one hundred eighty days nor more than two years
6 if the person is convicted of or is found to have committed a first
7 violation of an out-of-service order while transporting hazardous
8 materials required to be placarded under the Hazardous Materials
9 Transportation Act (46 U.S.C. Sec. 1801-1813), or while operating motor
10 vehicles designed to transport sixteen or more passengers, including
11 the driver. A person is disqualified for a period of not less than
12 three years nor more than five years if, during a ten-year period, the
13 person is convicted of or is found to have committed subsequent
14 violations of out-of-service orders, in separate incidents, while
15 transporting hazardous materials required to be placarded under the
16 Hazardous Materials Transportation Act, or while operating motor
17 vehicles designed to transport sixteen or more passengers, including
18 the driver.

19 (7) A person is disqualified from driving a commercial motor
20 vehicle if a report has been received by the department under RCW
21 46.25.125 that the person has received a confirmed positive drug or
22 alcohol test either as part of the testing program required by 49
23 C.F.R. 382 or 49 C.F.R. 40 or as part of a preemployment drug test. A
24 disqualification under this subsection remains in effect until the
25 person undergoes a drug and alcohol assessment by an agency certified
26 by the department of social and health services and, if the person is
27 classified as an alcoholic, drug addict, alcohol abuser, or drug
28 abuser, until the person presents evidence of satisfactory
29 participation in or successful completion of a drug or alcohol
30 treatment program that has been certified by the department of social
31 and health services under chapter 70.96A RCW and until the person has
32 met the requirements of RCW 46.25.100. The agency making a drug and
33 alcohol assessment under this section shall forward a diagnostic
34 evaluation and treatment recommendation to the department of licensing
35 for use in determining the person's eligibility for driving a
36 commercial motor vehicle. Persons who are disqualified under this
37 subsection more than twice in a five-year period are disqualified for
38 life.

1 (8)(a) A person is disqualified from driving a commercial motor
2 vehicle for the period of time specified in (b) of this subsection if
3 he or she is convicted of or is found to have committed one of the
4 following six offenses at a railroad-highway grade crossing while
5 operating a commercial motor vehicle in violation of a federal, state,
6 or local law or regulation:

7 (i) For drivers who are not required to always stop, failing to
8 slow down and check that the tracks are clear of an approaching train;

9 (ii) For drivers who are not required to always stop, failing to
10 stop before reaching the crossing, if the tracks are not clear;

11 (iii) For drivers who are always required to stop, failing to stop
12 before driving onto the crossing;

13 (iv) For all drivers, failing to have sufficient space to drive
14 completely through the crossing without stopping;

15 (v) For all drivers, failing to obey a traffic control device or
16 the directions of an enforcement officer at the crossing;

17 (vi) For all drivers, failing to negotiate a crossing because of
18 insufficient undercarriage clearance.

19 (b) A person is disqualified from driving a commercial motor
20 vehicle for a period of:

21 (i) Not less than sixty days if the driver is convicted of or is
22 found to have committed a first violation of a railroad-highway grade
23 crossing violation;

24 (ii) Not less than one hundred twenty days if the driver is
25 convicted of or is found to have committed a second railroad-highway
26 grade crossing violation in separate incidents within a three-year
27 period;

28 (iii) Not less than one year if the driver is convicted of or is
29 found to have committed a third or subsequent railroad-highway grade
30 crossing violation in separate incidents within a three-year period.

31 (9) Within ten days after suspending, revoking, or canceling a
32 commercial driver's license, the department shall update its records to
33 reflect that action. After suspending, revoking, or canceling a
34 nonresident commercial driver's privileges, the department shall notify
35 the licensing authority of the state that issued the commercial
36 driver's license.

1 **Sec. 5.** RCW 79A.60.040 and 1998 c 213 s 7 are each amended to read
2 as follows:

3 (1) It shall be unlawful for any person to operate a vessel in a
4 reckless manner.

5 (2) It shall be a violation for a person to operate a vessel while
6 under the influence of intoxicating liquor or any drug. A person is
7 considered to be under the influence of intoxicating liquor or any drug
8 if:

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

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

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

17 (d) The person is under the combined influence of or affected by
18 intoxicating liquor and any drug; or

19 (e) The person has any schedule I or II controlled substance or
20 metabolite or analog of any schedule I or II controlled substance in
21 his or her body, as shown by analysis of the person's blood made under
22 RCW 46.61.506.

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

30 (3) A violation of this section is a misdemeanor, punishable as
31 provided under RCW 9.92.030. In addition, the court may order the
32 defendant to pay restitution for any damages or injuries resulting from
33 the offense.

34 **Sec. 6.** RCW 90.56.540 and 2000 c 69 s 23 are each amended to read
35 as follows:

36 (1) A person is guilty of operating a vessel while under the

1 influence of intoxicating liquor or drugs if the person operates a
2 covered vessel within this state while:

3 (a) The person has 0.06 grams or more of alcohol per two hundred
4 ten liters of breath, as shown by analysis of the person's breath made
5 under RCW 90.56.550; or

6 (b) The person has 0.06 percent or more by weight of alcohol in the
7 person's blood as shown by analysis of the person's blood made under
8 RCW 90.56.550; or

9 (c) The person is under the influence of or affected by
10 intoxicating liquor or drugs; or

11 (d) The person is under the combined influence of or affected by
12 intoxicating liquor or drugs; or

13 (e) The person has any schedule I or II controlled substance or
14 metabolite or analog of any schedule I or II controlled substance in
15 his or her body as shown by analysis of the person's blood made under
16 RCW 90.56.550.

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

21 (3) Operating a vessel while intoxicated is a class C felony under
22 chapter 9A.20 RCW.

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