

# SENATE BILL REPORT

## SB 5838

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As of January 26, 2010

**Title:** An act relating to traffic infractions where the conduct is a proximate cause of death, great bodily harm, or substantial bodily harm to another.

**Brief Description:** Concerning traffic infractions where the conduct is a proximate cause of death, great bodily harm, or substantial bodily injury.

**Sponsors:** Senators McDermott, Jacobsen, Murray, Kohl-Welles and Fairley.

**Brief History:**

**Committee Activity:** Judiciary: 2/24/09, 2/25/09 [DPF], 1/26/10.

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5838 be substituted therefor, and the substitute bill do pass.

Signed by Senator .

**Minority Report:** Do not pass.

Signed by Senator .

**Staff:** Kim Johnson (786-7472)

**Background:** Under current law, a person is guilty of negligent driving in the second degree if that person operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property. Negligent driving in the second degree is an infraction and is subject to a fine of \$250.

For purposes of this infraction, negligent is defined as the failure to exercise ordinary care, and is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do something that a reasonably careful person would do under the same or similar circumstances.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** Vulnerable user of the public way is defined as a pedestrian, highway worker, person riding an animal; or a person operating a farm tractor,

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skateboard, roller skates or in-line skates, a scooter, a bicycle or tricycle, an electric assist bicycle, an electric personal assistive mobility device, or, a wheelchair or other personal mobility device.

A new traffic infraction is created. A person commits the traffic infraction when the person proximately causes the death, great bodily harm, or substantial bodily harm of a vulnerable user of the public way while committing negligent driving in the second degree. The law enforcement officer or prosecuting authority issuing the notice of infraction must state on the notice that the offense was a proximate cause of death, great bodily harm, or substantial bodily harm of a vulnerable user of a public way.

In addition to paying the fine levied for negligent driving in the second degree, a person who has committed this infraction may elect to either:

1. Pay a fine fixed by the court in an amount not to exceed \$5,000; and have his or her driving privileges suspended for 90 days; or
2. Complete a traffic safety course approved by the court; perform up to 100 hours of community service related to driver improvement and providing public education on traffic safety, as approved by the court; and submit certification to the court that the person has completed the requirements.

If a person fails to complete the required traffic safety and community service requirements within one year of the date of the violation, a court may assess a fine in an amount not to exceed \$5,000 and suspend the driving privileges for 90 days. The court has discretion to extend the period of time in which the person must complete the requirements.

Failure to appear for a hearing for a violation of the new infraction is subject to mandatory suspension of the driving privileges for 90 days and a fine of not more than \$5,000. A person whose license is suspended as a result of a violation of this infraction and who is found operating a motor vehicle during the suspension is guilty of driving while license suspended in the second degree, which is a gross misdemeanor.

**Appropriation:** None.

**Fiscal Note:** Requested on January 25, 2010.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** July 1, 2011.

**Staff Summary of Public Testimony:** PRO: Why do I bring this bill forward? Seattle has had a number of unfortunate incidents of deaths due to inattentive drivers over the past two years. What you don't hear about are the people who are also seriously injured in similar incidents. The proposal really gets at the issue where a driver is not filled with criminal intent, but causes the death or serious injury of a pedestrian or biker. There is a gap in our current laws to deal with incidents where someone is seriously injured or killed and the driver walks away with paying a small traffic ticket. The proposed substitute stays on the infraction level. As a bicyclist I've had a number of close calls over the years, and even some

where the person was intentionally trying to harm me. I think this bill would put people on notice that you're not going to get away with just paying a little fine anymore.

CON: I have concerns about criminalizing ordinary behavior, it is unconstitutional. I realize that the proposed substitute does not set the level at a criminal offense, yet the level of punishment is very much criminal in nature. The proposal applies quasi-criminal penalties to an infraction without the sixth Amendment protections. There are already adequate crimes that are sufficient to punish persons who cause these injuries and deaths.

OTHER: We have concerns about the bill procedurally. Some of the language makes reference to the court suspending the license, but DOL does the actual suspension. The other concern is that you've created an infraction with essentially criminal penalties. We have probation authorization and can recoup the cost through fees in criminal matters, but not for infractions. I understand that the numbers will show that there won't likely be that many of these cases, so the costs may ultimately be de minimis. On a personal note, my family and I are avid cyclists and are sympathetic to this issue. Frankly the best thing you could do to make cyclists safer is to make cell phone use while driving a primary offense and to have law enforcement do emphasis patrols.

**Persons Testifying:** PRO: Senator Joe McDermott; Bruce Crawford. Alice Hilbert, citizens.

CON: Arthur West, citizen.

OTHER: Judge Brett Buckley, District & Municipal Court Judges Assn.