

SENATE BILL REPORT

SSB 5326

As Amended by House, April 1, 2011

Title: An act relating to negligent driving resulting in substantial bodily harm, great bodily harm, or death of a vulnerable user of a public way.

Brief Description: Concerning negligent driving resulting in substantial bodily harm, great bodily harm, or death of a vulnerable user of a public way.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kline, Zarelli, Kohl-Welles, Nelson, Rockefeller and White).

Brief History:

Committee Activity: Judiciary: 1/21/11, 2/04/11 [DPS].

Passed Senate: 2/24/11, 43-5.

Passed House: 4/01/11, 61-32.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5326 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Harper, Vice Chair; Pflug, Ranking Minority Member; Carrell, Kohl-Welles, Regala and Roach.

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 Substitute Bill: Vulnerable user of the public way is defined as a pedestrian, person riding an animal; or a person operating a farm tractor, a bicycle, an electric assisted

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bicycle, an electric personal assistive mobility device, a moped, a motor-driven cycle; or a motorized foot scooter.

A new traffic infraction is created. A person commits the traffic infraction if, while operating a vehicle under circumstances that constitute negligent driving in the second degree, the person proximately causes the death, great bodily harm, or substantial bodily harm of a vulnerable user of the public way. 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 must pay a fine fixed by the court in an amount of at least \$1,000 but not to exceed \$5,000; and have his or her driving privileges suspended for 90 days.

However, a person who requests and personally appears for a hearing may elect to instead pay a penalty of \$250; 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 must assess a fine in an amount between \$1,000 and \$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.

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.

The infraction created under this act may not be deferred.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2012.

Staff Summary of Public Testimony on Proposed Substitute as Heard in Committee:
PRO: The Seattle City Attorney's Office has been working very closely with the courts and the Legislature to craft this legislation. The goal is to keep this proportional to the injury that has occurred. This bill is a good approach and places reasonable expectations on motorist responsibility and provides reasonable consequences for those who fail to drive safely.

Civil recourse is not always available to all victims. One September day, I was walking across the street with my three children in a school zone in a crosswalk. A car was stopped

for us, but the car behind them was speeding and distracted and rear ended the stopped car. The stopped car was pushed into us, which struck and killed my two year old daughter in front of me and my other children. In one year alone, the average pedestrian fatality and disabling injuries caused by motor vehicles total 165 per year. Last year due to distracted driving alone, 62 people died. In many of these cases, the facts of the case do not rise to the level of vehicular homicide or assault. This law is for everybody, not just special interest groups or bike clubs. Anything you can do that puts greater consequences to make drivers more responsible needs to get done.

My nephew was killed on his way to work by a motor vehicle. His children deserve some level of justice, something more than just a basic traffic ticket. As a survivor I can tell you the major impact a serious accident like this has to a person and their family. I think that the penalty of serving community service hours is a great idea and could open a person's eyes to the impact their actions have. Right now the person can send a check into court and never really face what their actions did to another person. This bill is intended to fix a loophole, there needs to be something more than a basic traffic fine when you kill or seriously injure someone.

OTHER: We take no position on the policy of this bill. The concern we have with the bill is the costs that the local courts will incur in implementing the bill. The bill has requirements that impact the court, although we do not yet know how many of these cases we will see. Under the deferred findings statute there is language that you could mirror for this bill which would allow the court to charge an administrative fee. Also, we feel it is important the members understand that the base penalty plus all of the statutory assessments that are added to all infractions will almost double the total penalty that is assessed under this infraction.

Persons Testifying: PRO: John Schochet, Seattle City Attorney's Office; Bob Duffy, Bicycle Alliance of Washington; Melissa Brulotte, Colleen Zakar, Nathan Gunckkinberger, Paul David, citizens.

OTHER: Judge Brett Buckley; District and Municipal Court Judges Association.

House Amendment(s):

- Changes the requirement that the court impose the alternative penalty when the person found to have committed the infraction elects it from mandatory to discretionary.
- Adds motorcycles to the definition of vulnerable user of a public way.
- Makes other technical changes.