

SHB 2030 - H AMD TO H AMD (H-2660.1/13) 538
By Representative Klippert

NOT CONSIDERED

1 On page 22, line 10 of the amendment, after "offenses" strike "in
2 ten years"

3 On page 22, line 13 of the amendment, after "offenses" strike
4 "within ten years" and insert "((~~within ten years~~))"

5 On page 70, after line 18 of the amendment, insert the following:

6 "**Sec. 34.** RCW 46.61.502 and 2013 c 3 s 33 (Initiative Measure No.
7 502) are each amended to read as follows:

8 (1) A person is guilty of driving while under the influence of
9 intoxicating liquor, marijuana, or any drug if the person drives a
10 vehicle within 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) The person has, within two hours after driving, a THC
15 concentration of 5.00 or higher as shown by analysis of the person's
16 blood made under RCW 46.61.506; or

17 (c) While the person is under the influence of or affected by
18 intoxicating liquor, marijuana, or any drug; or

19 (d) While the person is under the combined influence of or affected
20 by intoxicating liquor, marijuana, and any drug.

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

25 (3)(a) It is an affirmative defense to a violation of subsection
26 (1)(a) of this section, which the defendant must prove by a
27 preponderance of the evidence, that the defendant consumed a sufficient
28 quantity of alcohol after the time of driving and before the

1 administration of an analysis of the person's breath or blood to cause
2 the defendant's alcohol concentration to be 0.08 or more within two
3 hours after driving. The court shall not admit evidence of this
4 defense unless the defendant notifies the prosecution prior to the
5 omnibus or pretrial hearing in the case of the defendant's intent to
6 assert the affirmative defense.

7 (b) It is an affirmative defense to a violation of subsection
8 (1)(b) of this section, which the defendant must prove by a
9 preponderance of the evidence, that the defendant consumed a sufficient
10 quantity of marijuana after the time of driving and before the
11 administration of an analysis of the person's blood to cause the
12 defendant's THC concentration to be 5.00 or more within two hours after
13 driving. The court shall not admit evidence of this defense unless the
14 defendant notifies the prosecution prior to the omnibus or pretrial
15 hearing in the case of the defendant's intent to assert the affirmative
16 defense.

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

25 (b) Analyses of blood samples obtained more than two hours after
26 the alleged driving may be used as evidence that within two hours of
27 the alleged driving, a person had a THC concentration of 5.00 or more
28 in violation of subsection (1)(b) of this section, and in any case in
29 which the analysis shows a THC concentration above 0.00 may be used as
30 evidence that a person was under the influence of or affected by
31 marijuana in violation of subsection (1)(c) or (d) of this section.

32 (5) Except as provided in subsection (6) of this section, a
33 violation of this section is a gross misdemeanor.

34 (6) It is a class C felony punishable under chapter 9.94A RCW, or
35 chapter 13.40 RCW if the person is a juvenile, if:

36 (a) The person has four or more prior offenses (~~within ten years~~)
37 as defined in RCW 46.61.5055; or

38 (b) The person has ever previously been convicted of:

1 (i) Vehicular homicide while under the influence of intoxicating
2 liquor or any drug, RCW 46.61.520(1)(a);

3 (ii) Vehicular assault while under the influence of intoxicating
4 liquor or any drug, RCW 46.61.522(1)(b);

5 (iii) An out-of-state offense comparable to the offense specified
6 in (b)(i) or (ii) of this subsection; or

7 (iv) A violation of this subsection (6) or RCW 46.61.504(6).

8 **Sec. 35.** RCW 46.61.504 and 2013 c 3 s 35 (Initiative Measure No.
9 502) are each amended to read as follows:

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

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

18 (b) The person has, within two hours after being in actual physical
19 control of a vehicle, a THC concentration of 5.00 or higher as shown by
20 analysis of the person's blood made under RCW 46.61.506; or

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

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

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

31 (3)(a) It is an affirmative defense to a violation of subsection
32 (1)(a) of this section which the defendant must prove by a
33 preponderance of the evidence that the defendant consumed a sufficient
34 quantity of alcohol after the time of being in actual physical control
35 of the vehicle and before the administration of an analysis of the
36 person's breath or blood to cause the defendant's alcohol concentration
37 to be 0.08 or more within two hours after being in such control. The

1 court shall not admit evidence of this defense unless the defendant
2 notifies the prosecution prior to the omnibus or pretrial hearing in
3 the case of the defendant's intent to assert the affirmative defense.

4 (b) It is an affirmative defense to a violation of subsection
5 (1)(b) of this section, which the defendant must prove by a
6 preponderance of the evidence, that the defendant consumed a sufficient
7 quantity of marijuana after the time of being in actual physical
8 control of the vehicle and before the administration of an analysis of
9 the person's blood to cause the defendant's THC concentration to be
10 5.00 or more within two hours after being in control of the vehicle.
11 The court shall not admit evidence of this defense unless the defendant
12 notifies the prosecution prior to the omnibus or pretrial hearing in
13 the case of the defendant's intent to assert the affirmative defense.

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

23 (b) Analyses of blood samples obtained more than two hours after
24 the alleged being in actual physical control of a vehicle may be used
25 as evidence that within two hours of the alleged being in control of
26 the vehicle, a person had a THC concentration of 5.00 or more in
27 violation of subsection (1)(b) of this section, and in any case in
28 which the analysis shows a THC concentration above 0.00 may be used as
29 evidence that a person was under the influence of or affected by
30 marijuana in violation of subsection (1)(c) or (d) of this section.

31 (5) Except as provided in subsection (6) of this section, a
32 violation of this section is a gross misdemeanor.

33 (6) It is a class C felony punishable under chapter 9.94A RCW, or
34 chapter 13.40 RCW if the person is a juvenile, if:

35 (a) The person has four or more prior offenses (~~(within ten years)~~)
36 as defined in RCW 46.61.5055; or

37 (b) The person has ever previously been convicted of:

- 1 (i) Vehicular homicide while under the influence of intoxicating
2 liquor or any drug, RCW 46.61.520(1)(a);
3 (ii) Vehicular assault while under the influence of intoxicating
4 liquor or any drug, RCW 46.61.522(1)(b);
5 (iii) An out-of-state offense comparable to the offense specified
6 in (b)(i) or (ii) of this subsection; or
7 (iv) A violation of this subsection (6) or RCW 46.61.502(6)."

8 Renumber the remaining sections consecutively, correct any internal
9 references accordingly, and correct the title.

EFFECT: Eliminates the 10-year look back period and, as a result, makes it a class C felony offense upon a person's 5th DUI offense if he or she has four or more prior DUI offenses in a lifetime (instead of within the previous 10 years).

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