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HOUSE BILL 1758

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By Representatives Habib, Hayes, Kirby, Klippert, Takko, Sequist, Roberts, Fitzgibbon, Bergquist, Farrell, Lias, Ryu, and Buys

Read first time 02/07/13. Referred to Committee on Public Safety.

1 AN ACT Relating to boating safety; amending RCW 79A.60.040,  
2 10.31.100, and 79A.60.150; reenacting and amending RCW 7.80.120; adding  
3 new sections to chapter 79A.60 RCW; and prescribing penalties.

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

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

7 (1) It (~~shall be~~) is unlawful for any person to operate a vessel  
8 in a reckless manner.

9 (2) It (~~shall be a violation~~) is unlawful for a person to operate  
10 a vessel while under the influence of intoxicating liquor, marijuana,  
11 or any drug. A person is considered to be under the influence of  
12 intoxicating liquor, marijuana, or any drug if, within two hours of  
13 operating a vessel:

14 (a) The person has an alcohol concentration of 0.08 (~~grams~~) or  
15 (~~more of alcohol per two hundred ten liters of breath,~~) higher as  
16 shown by analysis of the person's breath or blood made under RCW  
17 46.61.506; or

18 (b) The person has (~~0.08 percent or more by weight of alcohol in~~)

1 ~~the person's blood, as shown by analysis of the person's blood made~~  
2 ~~under RCW 46.61.506)) a THC concentration of 5.00 or higher as shown by~~  
3 ~~analysis of the person's blood made under RCW 46.61.506; or~~

4 (c) The person is under the influence of or affected by  
5 intoxicating liquor, marijuana, or any drug; or

6 (d) The person is under the combined influence of or affected by  
7 intoxicating liquor, marijuana, and any drug.

8 (3) The fact that any person charged with a violation of this  
9 section is or has been entitled to use such drug under the laws of this  
10 state shall not constitute a defense against any charge of violating  
11 this section. ~~((A person cited under this subsection may upon request~~  
12 ~~be given a breath test for breath alcohol or may request to have a~~  
13 ~~blood sample taken for blood alcohol analysis. An arresting officer~~  
14 ~~shall administer field sobriety tests when circumstances permit.~~

15 ~~(3))~~ (4) Any person who operates a vessel within this state is  
16 deemed to have given consent, subject to the provisions of RCW  
17 46.61.506, to a test or tests of the person's breath or blood for the  
18 purpose of determining the alcohol concentration, THC concentration, or  
19 presence of any drug in the person's breath or blood if arrested for  
20 any offense where, at the time of the arrest, the arresting officer has  
21 reasonable grounds to believe the person was operating a vessel while  
22 under the influence of intoxicating liquor, marijuana, or any drug.  
23 Neither consent nor this section precludes a police officer from  
24 obtaining a search warrant for a person's breath or blood. An  
25 arresting officer may administer field sobriety tests when  
26 circumstances permit.

27 (5) The test or tests of breath must be administered pursuant to  
28 RCW 46.20.308. Where the officer has reasonable grounds to believe  
29 that the person is under the influence of a drug, or where the person  
30 is incapable due to physical injury, physical incapacity, or other  
31 physical limitation, of providing a breath sample, or where the person  
32 is being treated in a hospital, clinic, doctor's office, emergency  
33 medical vehicle, ambulance, or other similar facility, a blood test  
34 must be administered by a qualified person as provided in RCW  
35 46.61.506(5). The officer shall warn the person that if the person  
36 refuses to take the test, the person will be issued a class 1 civil  
37 infraction under RCW 7.80.120.

1       (6) A violation of subsection (1) of this section is a  
2 misdemeanor~~((, punishable as provided under RCW 9.92.030)).~~ A  
3 violation of subsection (2) of this section is a gross misdemeanor. In  
4 addition to the statutory penalties imposed, the court may order the  
5 defendant to pay restitution for any damages or injuries resulting from  
6 the offense.

7       NEW SECTION. Sec. 2. A new section is added to chapter 79A.60 RCW  
8 to read as follows:

9       (1) The refusal of a person to submit to a test of the alcohol  
10 concentration, THC concentration, or presence of any drug in the  
11 person's blood or breath is admissible into evidence at a subsequent  
12 criminal trial.

13       (2) A person's refusal to submit to a test or tests pursuant to RCW  
14 79A.60.040 constitutes a class 1 civil infraction under RCW 7.80.120.

15       **Sec. 3.** RCW 7.80.120 and 2003 c 365 s 3 and 2003 c 337 s 4 are  
16 each reenacted and amended to read as follows:

17       (1) A person found to have committed a civil infraction shall be  
18 assessed a monetary penalty.

19       (a) The maximum penalty and the default amount for a class 1 civil  
20 infraction shall be two hundred fifty dollars, not including statutory  
21 assessments, except for an infraction of state law involving: (i)  
22 Potentially dangerous litter as specified in RCW 70.93.060(4) (~~and an~~  
23 infraction of state law involving)); (ii) violent video or computer  
24 games under RCW 9.91.180; or (iii) a person's refusal to submit to a  
25 test or tests pursuant to RCW 79A.60.040 and section 2 of this act, in  
26 which case the maximum penalty and default amount is five hundred  
27 dollars;

28       (b) The maximum penalty and the default amount for a class 2 civil  
29 infraction shall be one hundred twenty-five dollars, not including  
30 statutory assessments;

31       (c) The maximum penalty and the default amount for a class 3 civil  
32 infraction shall be fifty dollars, not including statutory assessments;  
33 and

34       (d) The maximum penalty and the default amount for a class 4 civil  
35 infraction shall be twenty-five dollars, not including statutory  
36 assessments.

1 (2) The supreme court shall prescribe by rule the conditions under  
2 which local courts may exercise discretion in assessing fines for civil  
3 infractions.

4 (3) Whenever a monetary penalty is imposed by a court under this  
5 chapter it is immediately payable. If the person is unable to pay at  
6 that time the court may grant an extension of the period in which the  
7 penalty may be paid. If the penalty is not paid on or before the time  
8 established for payment, the court may proceed to collect the penalty  
9 in the same manner as other civil judgments and may notify the  
10 prosecuting authority of the failure to pay.

11 (4) The court may also order a person found to have committed a  
12 civil infraction to make restitution.

13 **Sec. 4.** RCW 10.31.100 and 2010 c 274 s 201 are each amended to  
14 read as follows:

15 A police officer having probable cause to believe that a person has  
16 committed or is committing a felony shall have the authority to arrest  
17 the person without a warrant. A police officer may arrest a person  
18 without a warrant for committing a misdemeanor or gross misdemeanor  
19 only when the offense is committed in the presence of the officer,  
20 except as provided in subsections (1) through (~~(+10+)~~) (11) of this  
21 section.

22 (1) Any police officer having probable cause to believe that a  
23 person has committed or is committing a misdemeanor or gross  
24 misdemeanor, involving physical harm or threats of harm to any person  
25 or property or the unlawful taking of property or involving the use or  
26 possession of cannabis, or involving the acquisition, possession, or  
27 consumption of alcohol by a person under the age of twenty-one years  
28 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070  
29 or 9A.52.080, shall have the authority to arrest the person.

30 (2) A police officer shall arrest and take into custody, pending  
31 release on bail, personal recognizance, or court order, a person  
32 without a warrant when the officer has probable cause to believe that:

33 (a) An order has been issued of which the person has knowledge  
34 under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26,  
35 26.50, or 74.34 RCW restraining the person and the person has violated  
36 the terms of the order restraining the person from acts or threats of  
37 violence, or restraining the person from going onto the grounds of or

1 entering a residence, workplace, school, or day care, or prohibiting  
2 the person from knowingly coming within, or knowingly remaining within,  
3 a specified distance of a location or, in the case of an order issued  
4 under RCW 26.44.063, imposing any other restrictions or conditions upon  
5 the person; or

6 (b) A foreign protection order, as defined in RCW 26.52.010, has  
7 been issued of which the person under restraint has knowledge and the  
8 person under restraint has violated a provision of the foreign  
9 protection order prohibiting the person under restraint from contacting  
10 or communicating with another person, or excluding the person under  
11 restraint from a residence, workplace, school, or day care, or  
12 prohibiting the person from knowingly coming within, or knowingly  
13 remaining within, a specified distance of a location, or a violation of  
14 any provision for which the foreign protection order specifically  
15 indicates that a violation will be a crime; or

16 (c) The person is sixteen years or older and within the preceding  
17 four hours has assaulted a family or household member as defined in RCW  
18 10.99.020 and the officer believes: (i) A felonious assault has  
19 occurred; (ii) an assault has occurred which has resulted in bodily  
20 injury to the victim, whether the injury is observable by the  
21 responding officer or not; or (iii) that any physical action has  
22 occurred which was intended to cause another person reasonably to fear  
23 imminent serious bodily injury or death. Bodily injury means physical  
24 pain, illness, or an impairment of physical condition. When the  
25 officer has probable cause to believe that family or household members  
26 have assaulted each other, the officer is not required to arrest both  
27 persons. The officer shall arrest the person whom the officer believes  
28 to be the primary physical aggressor. In making this determination,  
29 the officer shall make every reasonable effort to consider: (i) The  
30 intent to protect victims of domestic violence under RCW 10.99.010;  
31 (ii) the comparative extent of injuries inflicted or serious threats  
32 creating fear of physical injury; and (iii) the history of domestic  
33 violence of each person involved, including whether the conduct was  
34 part of an ongoing pattern of abuse.

35 (3) Any police officer having probable cause to believe that a  
36 person has committed or is committing a violation of any of the  
37 following traffic laws shall have the authority to arrest the person:

1 (a) RCW 46.52.010, relating to duty on striking an unattended car  
2 or other property;

3 (b) RCW 46.52.020, relating to duty in case of injury to or death  
4 of a person or damage to an attended vehicle;

5 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or  
6 racing of vehicles;

7 (d) RCW 46.61.502 or 46.61.504, relating to persons under the  
8 influence of intoxicating liquor or drugs;

9 (e) RCW 46.20.342, relating to driving a motor vehicle while  
10 operator's license is suspended or revoked;

11 (f) RCW 46.61.5249, relating to operating a motor vehicle in a  
12 negligent manner.

13 (4) A law enforcement officer investigating at the scene of a motor  
14 vehicle accident may arrest the driver of a motor vehicle involved in  
15 the accident if the officer has probable cause to believe that the  
16 driver has committed in connection with the accident a violation of any  
17 traffic law or regulation.

18 (5) A law enforcement officer investigating at the scene of a  
19 vessel accident may arrest the operator of a vessel involved in the  
20 accident if the officer has probable cause to believe that the operator  
21 has committed, in connection with the accident, a violation of any  
22 boating safety law or rule.

23 (6) Any police officer having probable cause to believe that a  
24 person has committed or is committing a violation of RCW 79A.60.040  
25 shall have the authority to arrest the person.

26 ((+6)) (7) An officer may act upon the request of a law  
27 enforcement officer in whose presence a traffic infraction was  
28 committed, to stop, detain, arrest, or issue a notice of traffic  
29 infraction to the driver who is believed to have committed the  
30 infraction. The request by the witnessing officer shall give an  
31 officer the authority to take appropriate action under the laws of the  
32 state of Washington.

33 ((+7)) (8) Any police officer having probable cause to believe  
34 that a person has committed or is committing any act of indecent  
35 exposure, as defined in RCW 9A.88.010, may arrest the person.

36 ((+8)) (9) A police officer may arrest and take into custody,  
37 pending release on bail, personal recognizance, or court order, a

1 person without a warrant when the officer has probable cause to believe  
2 that an order has been issued of which the person has knowledge under  
3 chapter 10.14 RCW and the person has violated the terms of that order.

4 ~~((+9))~~ (10) Any police officer having probable cause to believe  
5 that a person has, within twenty-four hours of the alleged violation,  
6 committed a violation of RCW 9A.50.020 may arrest such person.

7 ~~((+10))~~ (11) A police officer having probable cause to believe  
8 that a person illegally possesses or illegally has possessed a firearm  
9 or other dangerous weapon on private or public elementary or secondary  
10 school premises shall have the authority to arrest the person.

11 For purposes of this subsection, the term "firearm" has the meaning  
12 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning  
13 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

14 ~~((+11))~~ (12) Except as specifically provided in subsections (2),  
15 (3), (4), and ~~((+6))~~ (7) of this section, nothing in this section  
16 extends or otherwise affects the powers of arrest prescribed in Title  
17 46 RCW.

18 ~~((+12))~~ (13) No police officer may be held criminally or civilly  
19 liable for making an arrest pursuant to subsection (2) or ~~((+8))~~ (9)  
20 of this section if the police officer acts in good faith and without  
21 malice.

22 NEW SECTION. Sec. 5. A new section is added to chapter 79A.60 RCW  
23 to read as follows:

24 (1) No person who has vessels for hire, or the agent or employee  
25 thereof, shall rent, lease, charter, or otherwise permit the use of a  
26 vessel, unless the person:

27 (a) Displays the vessel registration numbers and a valid decal on  
28 the vessel hull as required by RCW 88.02.550(1);

29 (b) Keeps a copy of the vessel registration certificate aboard the  
30 vessel, in compliance with RCW 88.02.340;

31 (c) Displays a carbon monoxide decal on the vessel as required by  
32 RCW 88.02.390(2) if the vessel is motor-driven and is not a personal  
33 watercraft;

34 (d) Provides a copy of the rental agreement to be kept aboard  
35 during the rental, lease, charter, or use period for vessels required  
36 under chapter 88.02 RCW to be registered;

1 (e) Ensures that the vessel, if motor-propelled, meets the muffler  
2 or underwater exhaust system requirement in RCW 79A.60.130;

3 (f) Outfits the vessel with the quantity and type of personal  
4 floatation devices required by RCW 79A.60.140 and 79A.60.160 for the  
5 number and ages of the people who will use the vessel;

6 (g) Explains the personal floatation device requirements to the  
7 person renting, leasing, chartering, or otherwise using the vessel;

8 (h) Equips the vessel with a skier-down flag, and explains observer  
9 and personal floatation requirements of RCW 79A.60.170, if the persons  
10 renting, leasing, chartering, or otherwise using the vessel will be  
11 waterskiing;

12 (i) If the vessel is a personal watercraft, provides a personal  
13 floatation device and a lanyard attached to an engine cutoff switch for  
14 the operator to wear at all times when operating the personal  
15 watercraft, as required by RCW 79A.60.190;

16 (j) Reviews with the person operating the vessel, and all other  
17 persons who the operator may permit to operate the vessel, all the  
18 information contained in the motor vessel safety operating and  
19 equipment checklist prescribed by the Washington state parks and  
20 recreation commission and required under RCW 79A.60.640(6); and

21 (k) Provides all other safety equipment required by RCW 79A.60.110  
22 and referenced in the motor vessel safety operating and equipment  
23 checklist prescribed by the Washington state parks and recreation  
24 commission and required under RCW 79A.60.640(6).

25 (2) This section does not apply to fishing guides and charter boat  
26 operators who have a United States coast guard operator's license and  
27 are operating on navigable waters, and people who act in the capacity  
28 of a paid whitewater river outfitter or guide, or who operate a vessel  
29 carrying passengers for hire on whitewater rivers in this state.

30 (3) As provided in RCW 79A.60.020, a violation of this section is  
31 a civil infraction punishable under chapter 7.84 RCW, unless:

32 (a) The violation is a violation of RCW 88.02.550, which is  
33 punished as a class 2 civil infraction; or

34 (b) The current violation is the person's third violation of the  
35 same provision of this chapter during the past three hundred sixty-five  
36 days. If it is the person's third violation, then it must be punished  
37 as a misdemeanor under RCW 9.92.030.



1           **Sec. 6.** RCW 79A.60.150 and 1993 c 244 s 13 are each amended to  
2 read as follows:

3           If (~~(an infraction is issued under this chapter because a vessel~~  
4 ~~does not contain the required equipment and if the operator is not the~~  
5 ~~owner of the vessel, but is operating the vessel with the express or~~  
6 ~~implied permission of the owner, then either or both operator or owner~~  
7 ~~may be cited for the infraction)) a vessel does not contain the safety  
8 equipment required under this chapter and the rules of the commission,  
9 and the operator is not the owner of the vessel but is operating the  
10 vessel with the express or implied permission of the owner, then either  
11 the owner or the operator, or both, may be cited for the applicable  
12 infraction or charged with the applicable crime.~~

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