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**SUBSTITUTE SENATE BILL 5656**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Transportation (originally sponsored by Senators Rivers, Chase, Fain, and Keiser; by request of Washington Traffic Safety Commission)

AN ACT Relating to enhancing public safety by reducing distracted driving incidents caused by the use of personal wireless communications devices; amending RCW 46.61.668, 46.20.055, 46.20.075, 46.25.010, and 46.20.130; creating a new section; repealing RCW 46.61.667; prescribing penalties; and providing an effective date.

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

NEW SECTION. **Sec.**  The legislature recognizes that cell phones can be a benefit to an individual's convenience and efficiency but are a dangerous distraction when driving a vehicle. The legislature further recognizes that under the federal funding authorization, moving ahead for progress in the 21st century act, funds have been set aside to combat the emerging national problem of distracted driving, and that distracted driving is one of the top three causes of fatal teen collisions. The legislature further recognizes that for Washington state to enhance public safety and qualify for these federal funds, the existing cell phone laws must be amended to meet the new requirements. As such, it is the intent of the legislature that our state's existing cell phone laws are brought in line with federal grant criteria to ensure that the maximum amount of federal funds are made available to these important safety programs.

**Sec.**  RCW 46.61.668 and 2013 c 224 s 16 are each amended to read as follows:

(1)(a) ((~~Except as provided in subsection (2)(a) of this section,~~)) A person operating a ((~~moving noncommercial~~)) motor vehicle on a public highway (i) while holding a personal wireless communications device in his or her hand or hands or (ii) who((~~, by means of an electronic~~)) uses a personal wireless communications device((~~, sends, reads, or writes a text message~~)) to read or manually enter data including, but not limited to, short message service texting, emailing, instant messaging, or engaging in any other form of electronic data retrieval or electronic data communication, is guilty of a traffic infraction. This subsection (1)(a) does not prohibit the use of a hands-free personal wireless communications device that is equipped with an attachment or addition, whether or not permanently part of such device, or that is physically or electronically integrated into a motor vehicle by which a user engages in communication without the use of either hand; however, this does not preclude the use of either hand to activate, deactivate, or initiate a function of the device.

(b) ((~~Except as provided in subsection (2)(b) of this section, a person driving a commercial motor vehicle, as defined in RCW 46.25.010, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays, who, by means of an electronic wireless communications device, sends, reads, or writes a text message, is guilty of a traffic infraction. For purposes of this subsection, "driving" does not include operating a commercial motor vehicle with or without the motor running when the driver has moved the vehicle to the side of, or off, a highway and has stopped in a location where the vehicle can safely remain stationary.~~

~~(c) A person does not send, read, or write a text message when he or she reads, selects, or enters a phone number or name in a wireless communications device for the purpose of making a phone call~~)) The holder of an intermediate license under RCW 46.20.075 or driver's instruction permit under RCW 46.20.055 may not use a personal wireless communications device in any manner while operating a motor vehicle.

(2)((~~(a)~~)) Subsection (1)((~~(a)~~)) of this section does not apply to ((~~a person operating~~)):

((~~(i) An authorized emergency vehicle;~~

~~(ii) A voice-operated global positioning or navigation system that is affixed to the vehicle and that allows the user to send or receive messages without diverting visual attention from the road or engaging the use of either hand; or~~

~~(iii) A moving motor vehicle while using an electronic wireless communications device to:~~

~~(A) Report illegal activity;~~

~~(B) Summon medical or other emergency help;~~

~~(C) Prevent injury to a person or property; or~~

~~(D) Relay information that is time sensitive between a transit or for-hire operator and that operator's dispatcher, in which the device is permanently affixed to the vehicle.~~

~~(b) Subsection (1)(b) of this section does not apply to a person operating a commercial motor vehicle when necessary to communicate with law enforcement officials or other emergency services.~~

~~(3) Infractions under subsection (1)(a) of this section shall not become part of the driver's record under RCW 46.52.101 and 46.52.120. Additionally, a finding that a person has committed a traffic infraction under subsection (1)(a) of this section shall not be made available to insurance companies or employers~~)) (a) A driver who uses a personal wireless communications device to contact emergency services; or

(b) Emergency services personnel who use a personal wireless communications device while (i) operating an emergency services vehicle and (ii) engaged in the performance of their duties as emergency services personnel.

(3) For purposes of this section: (a) "Operating a motor vehicle" includes the operation of a motor vehicle while it is moving and while it is temporarily stationary because of traffic, a traffic light, or a stop sign, and does not include when the vehicle has pulled over to the side of, or off, the roadway and has stopped in a location where it can safely remain stationary; and (b) "personal wireless communications device" includes a device through which personal wireless services, as defined in 47 U.S.C. Sec. 332(c)(7)(C)(i), are transmitted, and does not include a global navigation satellite system receiver used for positioning, emergency notification, or navigation purposes.

(4) A person found to have committed more than one violation of this section within a five-year period must be assessed a monetary penalty equal to twice the penalty assessed under RCW 46.63.110. Fifty percent of the moneys collected under this subsection must be deposited into the highway safety fund under RCW 46.68.060.

(5) The state preempts the field of regulating the use of personal wireless communications devices in motor vehicles, and this section supersedes any local laws, ordinances, orders, rules, or regulations enacted by any political subdivision or municipality to regulate the use of personal wireless communications devices by the operator of a motor vehicle.

**Sec.**  RCW 46.20.055 and 2012 c 80 s 5 are each amended to read as follows:

(1) **Driver's instruction permit**. The department may issue a driver's instruction permit with or without a photograph to an applicant who has successfully passed all parts of the examination other than the driving test, provided the information required by RCW 46.20.091, paid an application fee of twenty-five dollars, and meets the following requirements:

(a) Is at least fifteen and one-half years of age; or

(b) Is at least fifteen years of age and:

(i) Has submitted a proper application; and

(ii) Is enrolled in a traffic safety education program offered, approved, and accredited by the superintendent of public instruction or offered by a driver training school licensed and inspected by the department of licensing under chapter 46.82 RCW, that includes practice driving.

(2) **Waiver of written examination for instruction permit**. The department may waive the written examination, if, at the time of application, an applicant is enrolled in:

(a) A traffic safety education course as defined by RCW 28A.220.020(2); or

(b) A course of instruction offered by a licensed driver training school as defined by RCW 46.82.280.

The department may require proof of registration in such a course as it deems necessary.

(3) **Effect of instruction permit**. A person holding a driver's instruction permit may drive a motor vehicle, other than a motorcycle, upon the public highways if:

(a) The person has immediate possession of the permit; and

(b) ((~~The person is not using a wireless communications device, unless the person is using the device to report illegal activity, summon medical or other emergency help, or prevent injury to a person or property; and~~

~~(c)~~)) An approved instructor, or a licensed driver with at least five years of driving experience, occupies the seat beside the driver.

(4) **Term of instruction permit**. A driver's instruction permit is valid for one year from the date of issue.

(a) The department may issue one additional one-year permit.

(b) The department may issue a third driver's permit if it finds after an investigation that the permittee is diligently seeking to improve driving proficiency.

(c) A person applying for an additional instruction permit must submit the application to the department in person and pay an application fee of twenty-five dollars for each issuance.

**Sec.**  RCW 46.20.075 and 2011 c 60 s 44 are each amended to read as follows:

(1) An intermediate license authorizes the holder to drive a motor vehicle under the conditions specified in this section. An applicant for an intermediate license must be at least sixteen years of age and:

(a) Have possessed a valid instruction permit for a period of not less than six months;

(b) Have passed a driver licensing examination administered by the department;

(c) Have passed a course of driver's education in accordance with the standards established in RCW 46.20.100;

(d) Present certification by his or her parent, guardian, or employer to the department stating (i) that the applicant has had at least fifty hours of driving experience, ten of which were at night, during which the driver was supervised by a person at least twenty-one years of age who has had a valid driver's license for at least three years, and (ii) that the applicant has not been issued a notice of traffic infraction or cited for a traffic violation that is pending at the time of the application for the intermediate license;

(e) Not have been convicted of or found to have committed a traffic violation within the last six months before the application for the intermediate license; and

(f) Not have been adjudicated for an offense involving the use of alcohol or drugs during the period the applicant held an instruction permit.

(2) For the first six months after the issuance of an intermediate license or until the holder reaches eighteen years of age, whichever occurs first, the holder of the license may not operate a motor vehicle that is carrying any passengers under the age of twenty who are not members of the holder's immediate family as defined in RCW 42.17A.005. For the remaining period of the intermediate license, the holder may not operate a motor vehicle that is carrying more than three passengers who are under the age of twenty who are not members of the holder's immediate family.

(3) The holder of an intermediate license may not operate a motor vehicle between the hours of 1 a.m. and 5 a.m. except when the holder is accompanied by a parent, guardian, or a licensed driver who is at least twenty-five years of age.

(4) ((~~The holder of an intermediate license may not operate a moving motor vehicle while using a wireless communications device unless the holder is using the device to report illegal activity, summon medical or other emergency help, or prevent injury to a person or property.~~

~~(5)~~)) It is a traffic infraction for the holder of an intermediate license to operate a motor vehicle in violation of the restrictions imposed under this section.

((~~(6) Except for a violation of subsection (4) of this section,~~)) (5) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of this title or an equivalent local ordinance or some other offense.

((~~(7)~~)) (6) An intermediate licensee may drive at any hour without restrictions on the number of passengers in the vehicle if necessary for agricultural purposes.

((~~(8)~~)) (7) An intermediate licensee may drive at any hour without restrictions on the number of passengers in the vehicle if, for the twelve-month period following the issuance of the intermediate license, he or she:

(a) Has not been involved in an accident involving only one motor vehicle;

(b) Has not been involved in an accident where he or she was cited in connection with the accident or was found to have caused the accident;

(c) Has not been involved in an accident where no one was cited or was found to have caused the accident; and

(d) Has not been convicted of or found to have committed a traffic offense described in chapter 46.61 RCW or violated restrictions placed on an intermediate licensee under this section.

**Sec.**  RCW 46.25.010 and 2013 c 224 s 3 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter.

(1) "Alcohol" means any substance containing any form of alcohol, including but not limited to ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

(a) The number of grams of alcohol per one hundred milliliters of blood; or

(b) The number of grams of alcohol per two hundred ten liters of breath.

(3) "Commercial driver's license" (CDL) means a license issued to an individual under chapter 46.20 RCW that has been endorsed in accordance with the requirements of this chapter to authorize the individual to drive a class of commercial motor vehicle.

(4) The "commercial driver's license information system" (CDLIS) is the information system established pursuant to 49 U.S.C. Sec. 31309 to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial learner's permit" (CLP) means a permit issued under RCW 46.25.052 for the purposes of behind-the-wheel training.

(6) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of ((~~a [any]~~)) any towed unit ((~~[or units]~~)) or units with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds or more), whichever is greater; or

(b) Has a gross vehicle weight rating or gross vehicle weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater; or

(c) Is designed to transport sixteen or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of hazardous materials as defined in this section; or

(e) Is a school bus regardless of weight or size.

(7) "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, entry into a deferred prosecution program under chapter 10.05 RCW, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(8) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(9) "Drive" means to drive, operate, or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and 46.25.120, "drive" includes operation or physical control of a motor vehicle anywhere in the state.

(10) "Drugs" are those substances as defined by RCW 69.04.009, including, but not limited to, those substances defined by 49 C.F.R. Sec. 40.3.

(11) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(12) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the maximum loaded weight of a single vehicle. The GVWR of a combination or articulated vehicle, commonly referred to as the "gross combined weight rating" or GCWR, is the GVWR of the power unit plus the GVWR of the towed unit or units. If the GVWR of any unit cannot be determined, the actual gross weight will be used. If a vehicle with a GVWR of less than 11,794 kilograms (26,001 pounds or less) has been structurally modified to carry a heavier load, then the actual gross weight capacity of the modified vehicle, as determined by RCW 46.44.041 and 46.44.042, will be used as the GVWR.

(13) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. Sec. 5103 and is required to be placarded under subpart F of 49 C.F.R. Part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. Part 73.

(14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(15) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out-of-service pursuant to 49 C.F.R. Secs. 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American uniform out-of-service criteria.

(16) "Positive alcohol confirmation test" means an alcohol confirmation test that:

(a) Has been conducted by a breath alcohol technician under 49 C.F.R. Part 40; and

(b) Indicates an alcohol concentration of 0.04 or more.

A report that a person has refused an alcohol test, under circumstances that constitute the refusal of an alcohol test under 49 C.F.R. Part 40, will be considered equivalent to a report of a positive alcohol confirmation test for the purposes of this chapter.

(17) "School bus" means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

(18) "Serious traffic violation" means:

(a) Excessive speeding, defined as fifteen miles per hour or more in excess of the posted limit;

(b) Reckless driving, as defined under state or local law;

(c) Driving while ((~~using~~)) holding a ((~~hand-held~~)) personal wireless communications device ((~~[hand-held mobile telephone]~~)), defined as a violation of RCW ((~~46.61.667(1)(b)~~)) 46.61.668(1)(a)(i) or an equivalent administrative rule or local law, ordinance, rule, or resolution;

(d) Texting, defined as a violation of RCW 46.61.668(1)(a)(ii) or an equivalent administrative rule or local law, ordinance, rule, or resolution;

(e) A violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person;

(f) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(g) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession; however, any individual who provides proof to the court by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, is not guilty of a "serious traffic violation";

(h) Driving a commercial motor vehicle without the proper class of commercial driver's license endorsement or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported; and

(i) Any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, that the department determines by rule to be serious.

(19) "State" means a state of the United States and the District of Columbia.

(20) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, training, and continuing education requirements of 49 C.F.R. Sec. 40.281.

(21) "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than one hundred nineteen gallons and an aggregate rated capacity of one thousand gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of one thousand gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.

(22) "Type of driving" means one of the following:

(a) "Nonexcepted interstate," which means the CDL or CLP holder or applicant operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 C.F.R. Part 391 as it existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(b) "Excepted interstate," which means the CDL or CLP holder or applicant operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 C.F.R. Secs. 390.3(f), 391.2, 391.68, or 398.3, as they existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, from all or parts of the qualification requirements of 49 C.F.R. Part 391 as it existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is therefore not required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(c) "Nonexcepted intrastate," which means the CDL or CLP holder or applicant operates only in intrastate commerce and is therefore subject to state driver qualification requirements; or

(d) "Excepted intrastate," which means the CDL or CLP holder or applicant operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements.

(23) "United States" means the fifty states and the District of Columbia.

(24) "Verified positive drug test" means a drug test result or validity testing result from a laboratory certified under the authority of the federal department of health and human services that:

(a) Indicates a drug concentration at or above the cutoff concentration established under 49 C.F.R. Sec. 40.87; and

(b) Has undergone review and final determination by a medical review officer.

A report that a person has refused a drug test, under circumstances that constitute the refusal of a federal department of transportation drug test under 49 C.F.R. Part 40, will be considered equivalent to a report of a verified positive drug test for the purposes of this chapter.

**Sec.**  RCW 46.20.130 and 2006 c 190 s 1 are each amended to read as follows:

(1) The director shall prescribe the content of the driver licensing examination and the manner of conducting the examination, which shall include, but is not limited to:

(a) A test of the applicant's eyesight and ability to see, understand, and follow highway signs regulating, warning, and directing traffic;

(b) A test of the applicant's knowledge of traffic laws and ability to understand and follow the directives of lawful authority, orally or graphically, that regulate, warn, and direct traffic in accordance with the traffic laws of this state. The director shall incorporate questions on distracted driving in this portion of the examination;

(c) An actual demonstration of the applicant's ability to operate a motor vehicle without jeopardizing the safety of persons or property. If the applicant is deaf or hearing impaired, the applicant may be accompanied by an interpreter to assist the applicant during the demonstration. The interpreter will be of the applicant's choosing from a list provided by the department of licensing; and

(d) Such further examination as the director deems necessary:

(i) To determine whether any facts exist that would bar the issuance of a vehicle operator's license under chapters 46.20, 46.21, and 46.29 RCW; and

(ii) To determine the applicant's fitness to operate a motor vehicle safely on the highways.

(2) If the applicant desires to drive a motorcycle or a motor-driven cycle, he or she must qualify for a motorcycle endorsement under RCW 46.20.500 through 46.20.515.

NEW SECTION. **Sec.**  RCW 46.61.667 (Using a wireless communications device or hand-held mobile telephone while driving) and 2013 c 224 s 15, 2010 c 223 s 3, & 2007 c 417 s 2 are each repealed.

NEW SECTION. **Sec.**  This act takes effect August 1, 2015.

**--- END ---**