

SSB 5289 - H COMM AMD
By Committee on Transportation

ADOPTED AS AMENDED 04/12/2017

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 46.61
4 RCW to read as follows:

5 (1) A person who uses a personal electronic device while driving
6 a motor vehicle on a public highway is guilty of a traffic infraction
7 and must pay a fine as provided in RCW 46.63.110(3).

8 (2) Subsection (1) of this section does not apply to:

9 (a) A driver who is using a personal electronic device to contact
10 emergency services;

11 (b) The use of a system by a transit system employee for time-
12 sensitive relay communication between the transit system employee and
13 the transit system's dispatch services;

14 (c) An individual employed as a commercial motor vehicle driver
15 who uses a personal electronic device within the scope of such
16 individual's employment if such use is permitted under 49 U.S.C. Sec.
17 31136 as it existed on the effective date of this section; and

18 (d) A person operating an authorized emergency vehicle.

19 (3) The state preempts the field of regulating the use of
20 personal electronic devices in motor vehicles while driving, and this
21 section supersedes any local laws, ordinances, orders, rules, or
22 regulations enacted by any political subdivision or municipality to
23 regulate the use of a personal electronic device by the operator of a
24 motor vehicle.

25 (4) A second or subsequent offense under this section is subject
26 to two times the penalty amount under RCW 46.63.110.

27 (5) For purposes of this section:

28 (a) "Driving" means to operate a motor vehicle on a public
29 highway, including while temporarily stationary because of traffic, a
30 traffic control device, or other momentary delays. "Driving" does not
31 include when the vehicle has pulled over to the side of, or off of,

1 an active roadway and has stopped in a location where it can safely
2 remain stationary.

3 (b) "Personal electronic device" means any portable electronic
4 device that is capable of wireless communication or electronic data
5 retrieval and is not manufactured primarily for hands-free use in a
6 motor vehicle. "Personal electronic device" includes, but is not
7 limited to, a cell phone, tablet, laptop, two-way messaging device,
8 or electronic game. "Personal electronic device" does not include
9 two-way radio, citizens band radio, or amateur radio equipment.

10 (c) "Use" or "uses" means:

11 (i) Holding a personal electronic device in either hand or both
12 hands;

13 (ii) Using your hand or finger to compose, send, read, view,
14 access, browse, transmit, save, or retrieve email, text messages,
15 instant messages, photographs, or other electronic data; however,
16 this does not preclude the minimal use of a finger to activate,
17 deactivate, or initiate a function of the device;

18 (iii) Watching video on a personal electronic device.

19 NEW SECTION. **Sec. 2.** The following acts or parts of acts are
20 each repealed:

21 (1) RCW 46.61.667 (Using a wireless communications device or
22 handheld mobile telephone while driving) and 2013 c 224 s 15, 2010 c
23 223 s 3, & 2007 c 417 s 2; and

24 (2) RCW 46.61.668 (Sending, reading, or writing a text message
25 while driving) and 2013 c 224 s 16, 2010 c 223 s 4, & 2007 c 416 s 1.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 46.61
27 RCW to read as follows:

28 (1)(a) It is a traffic infraction to drive dangerously
29 distracted. Any driver who commits this infraction must be assessed a
30 base penalty of thirty dollars.

31 (b) Enforcement of the infraction of driving dangerously
32 distracted may be accomplished only as a secondary action when a
33 driver of a motor vehicle has been detained for a suspected violation
34 of a separate traffic infraction or an equivalent local ordinance.

35 (c) For the purposes of this section, "dangerously distracted"
36 means a person who engages in any activity not related to the actual
37 operation of a motor vehicle in a manner that interferes with the
38 safe operation of such motor vehicle on any highway.

1 (2) The additional monetary penalty imposed under this section
2 must be deposited into the distracted driving prevention account
3 created in subsection (3) of this section.

4 (3) The distracted driving prevention account is created in the
5 state treasury. All receipts from the base penalty in subsection (1)
6 of this section must be deposited into the account. Moneys in the
7 account may be spent only after appropriation. Expenditures from the
8 account may be used only to support programs dedicated to reducing
9 distracted driving and improving driver education on distracted
10 driving.

11 **Sec. 4.** RCW 46.25.010 and 2013 c 224 s 3 are each amended to
12 read as follows:

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

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

18 (2) "Alcohol concentration" means:

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

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

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

27 (4) The "commercial driver's license information system" (CDLIS)
28 is the information system established pursuant to 49 U.S.C. Sec.
29 31309 to serve as a clearinghouse for locating information related to
30 the licensing and identification of commercial motor vehicle drivers.

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

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

36 (a) Has a gross combination weight rating or gross combination
37 weight of 11,794 kilograms or more (26,001 pounds or more), whichever
38 is greater, inclusive of a [any] towed unit [or units] with a gross

1 vehicle weight rating or gross vehicle weight of more than 4,536
2 kilograms (10,000 pounds or more), whichever is greater; or

3 (b) Has a gross vehicle weight rating or gross vehicle weight of
4 11,794 kilograms or more (26,001 pounds or more), whichever is
5 greater; or

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

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

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

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

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

23 (9) "Drive" means to drive, operate, or be in physical control of
24 a motor vehicle in any place open to the general public for purposes
25 of vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and
26 46.25.120, "drive" includes operation or physical control of a motor
27 vehicle anywhere in the state.

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

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

35 (12) "Gross vehicle weight rating" (GVWR) means the value
36 specified by the manufacturer as the maximum loaded weight of a
37 single vehicle. The GVWR of a combination or articulated vehicle,
38 commonly referred to as the "gross combined weight rating" or GCWR,
39 is the GVWR of the power unit plus the GVWR of the towed unit or
40 units. If the GVWR of any unit cannot be determined, the actual gross

1 weight will be used. If a vehicle with a GVWR of less than 11,794
2 kilograms (26,001 pounds or less) has been structurally modified to
3 carry a heavier load, then the actual gross weight capacity of the
4 modified vehicle, as determined by RCW 46.44.041 and 46.44.042, will
5 be used as the GVWR.

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

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

15 (15) "Out-of-service order" means a declaration by an authorized
16 enforcement officer of a federal, state, Canadian, Mexican, or local
17 jurisdiction that a driver, a commercial motor vehicle, or a motor
18 carrier operation is out-of-service pursuant to 49 C.F.R. Secs.
19 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North
20 American uniform out-of-service criteria.

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

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

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

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

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

34 (18) "Serious traffic violation" means:

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

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

38 (c) Driving while using a (~~handheld wireless communications~~
39 ~~device [handheld mobile telephone], defined as a violation of RCW~~
40 ~~46.61.667(1)(b)) personal electronic device, defined as a violation~~

1 of section 1 of this act, which includes in the activities it
2 prohibits driving while holding a personal electronic device in
3 either or both hands and using a hand or finger for texting, or an
4 equivalent administrative rule or local law, ordinance, rule, or
5 resolution;

6 ~~((Texting, defined as a violation of RCW 46.61.668(1)(b) or~~
7 ~~an equivalent administrative rule or local law, ordinance, rule, or~~
8 ~~resolution;~~

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

13 ~~((f))~~ (e) Driving a commercial motor vehicle without obtaining
14 a commercial driver's license;

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

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

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

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

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

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

1 temporarily attached to a flatbed trailer is not considered a tank
2 vehicle.

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

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

13 (b) "Excepted interstate," which means the CDL or CLP holder or
14 applicant operates or expects to operate in interstate commerce, but
15 engages exclusively in transportation or operations excepted under 49
16 C.F.R. Secs. 390.3(f), 391.2, 391.68, or 398.3, as they existed on
17 July 8, 2014, or such subsequent date as may be provided by the
18 department by rule, consistent with the purposes of this section,
19 from all or parts of the qualification requirements of 49 C.F.R. Part
20 391 as it existed on July 8, 2014, or such subsequent date as may be
21 provided by the department by rule, consistent with the purposes of
22 this section, and is therefore not required to obtain a medical
23 examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on
24 July 8, 2014, or such subsequent date as may be provided by the
25 department by rule, consistent with the purposes of this section;

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

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

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

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

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

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

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

8 NEW SECTION. **Sec. 5.** This act takes effect January 1, 2019."

9 Correct the title.

EFFECT: (1) Modifies the definition of "serious traffic violation," as that term applies to grounds for temporary disqualification from driving a commercial motor vehicle, to replace references to current laws against using a handheld mobile telephone and texting while driving with a reference to the prohibition against using a personal electronic device while driving.

(2) Moves the act's effective date back by one year, from January 1, 2018, to January 1, 2019.

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