

HOUSE BILL REPORT

HB 1874

As Reported by House Committee On:
Public Safety

Title: An act relating to blood and breath alcohol concentration of persons operating or in physical control of a vehicle, vessel, or aircraft.

Brief Description: Addressing the blood and breath alcohol concentration of persons operating or in physical control of a vehicle, vessel, or aircraft.

Sponsors: Representatives Lovick, Klippert, Pellicciotti, Goodman, Kilduff, Ryu, Gregerson, Senn, Kagi, Haler, Stanford, Bergquist and Farrell.

Brief History:

Committee Activity:

Public Safety: 2/7/17, 2/9/17 [DP].

Brief Summary of Bill

- Lowers the "per se" blood and breath alcohol concentration (BAC) threshold for impaired driving offenses, and related offenses and sanctions, from 0.08 BAC to 0.05 BAC.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass. Signed by 6 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Chapman, Orwall and Pettigrew.

Minority Report: Do not pass. Signed by 3 members: Representatives Hayes, Assistant Ranking Minority Member; Griffey and Van Werven.

Minority Report: Without recommendation. Signed by 2 members: Representatives Appleton and Holy.

Staff: Omeara Harrington (786-7136).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A person may be convicted of impaired driving under either the Driving Under the Influence (DUI) statute or the Physical Control of a Vehicle While Under the Influence (PC) statute. A person is guilty of DUI if he or she drives while under the influence of intoxicating liquor, marijuana, or any drug, and is guilty of PC if he or she has actual physical control of a vehicle while under the influence of intoxicating liquor, marijuana, or any drug.

To be convicted of DUI or PC, the person must either: (1) have a BAC of 0.08 or higher or a tetrahydrocannabinol (THC) concentration of 5.00 or higher within two hours after driving or being in physical control of a vehicle; or (2) have been driving or in physical control while under the influence of or affected by intoxicating liquor or any drug, or a combination of such substances. Driving or physical control of a vehicle with a BAC at or above the 0.08 threshold is a "per se" violation of the DUI and PC laws. A per se violation requires only the presence of the required BAC level to establish impairment, and does not require additional proof that the driver was impaired.

Other offenses and sanctions also utilize the 0.08 BAC threshold:

- A person is guilty of the crime of operating a vessel while under the influence if he or she registers a BAC of 0.08 or higher.
- Under the Washington Code of Military Justice, a person subject to the code may be punished by court martial if he or she operates or is in physical control of a vehicle, aircraft, or vessel with a BAC of 0.08 or higher.
- In addition to other punishments for a DUI or PC conviction, it is a condition of probation that the person not drive or be in physical control of a motor vehicle with a BAC of 0.08 or higher.
- An administrative suspension of a driver's license is triggered, among other circumstances, if a person arrested for DUI or PC has a BAC of 0.08 or higher.
- A person is subject to temporary or permanent disqualification from driving a commercial motor vehicle if the person has one or more convictions for driving a noncommercial motor vehicle while the person's BAC is 0.08 or more.

Summary of Bill:

The per se BAC threshold for DUI and PC offenses is lowered from 0.08 BAC to 0.05 BAC. The other offenses and sanctions that currently utilize the 0.08 BAC threshold are also changed to reflect the 0.05 BAC threshold.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 4 which, because of a prior delayed effective date, takes effect January 1, 2019.

Staff Summary of Public Testimony:

(In support) This is a simple, but significant, piece of legislation. It is simple in that it lowers the BAC from 0.08 to 0.05; it is significant in the reduction of fatalities and collisions on the road. This is not in opposition to drinking, it is in opposition to driving while intoxicated. The Washington Traffic Safety Commission has done research that found that people are intoxicated at a BAC of 0.05.

Prosecutors support this bill. One of the benefits of the bill is that it reinforces that the message is not "don't drink too much and drive," but rather "don't drink and drive." The benefit of having a per se limit is that all that must be proven is that the per se limit has been reached. Prosecutors do sometimes prosecute when the BAC is under 0.08, but it is more difficult to convince a jury to convict. It would help to not have to look for additional evidence to establish impairment between 0.05 and 0.08. A lot of these cases are currently charged as negligent or reckless driving, and would instead likely be charged as DUI if the BAC threshold were lower.

There is a goal to reach the "Target Zero" goal of zero traffic fatalities and serious injuries. This is accomplished through changing behavior, laws, and education. People do not always set good boundaries for themselves, and 0.05 looks different on different people. Troopers are passionate about keeping people safe. This could start changing the culture and the behavior. Currently, truckers have a limit of 0.04.

(Opposed) None.

(Other) Target Zero has a goal of zero traffic fatalities and serious injuries. In recent years, nearly half of the total traffic fatalities were DUI related. Poly-drug DUI has increased greatly, and is causing a high number of the fatalities. The National Transportation Safety Board has recognized that impairment begins way below 0.08 and recommends that states move to 0.05. Many other countries are at this level or lower. At very low BAC levels, peripheral vision is lost. Also, people respond individually to alcohol. Arrest is possible at lower BAC numbers, but juries want a number. This change would be a broad deterrent that would lower the number of drunk drivers at all BAC levels.

It is good to create a bright, sharp line against drinking and driving, and this is a clear message to not mix alcohol and driving. However, the Legislature often promotes other concerning policies that increase access to alcohol, for example, allowing samples at grocery stores and farmer's markets, and allowing entire servings at wedding boutiques and movie theaters.

There are practical implications with this bill. The title should be changed to "driving after consuming" to get the word out about what the law does now. Colorado has a middle ground law for driving with ability impaired with less serious punishments for 0.05 BAC offenders.

Persons Testifying: (In support) Representative Lovick, prime sponsor; Monica Alexander, Washington State Patrol; and Jon Tunheim, Washington Association of Prosecuting Attorneys.

(Other) Shelly Baldwin, Traffic Safety Commission; Seth Dawson, Washington Association for Substance Abuse & Violence Prevention; and Jason Lantz, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

Persons Signed In To Testify But Not Testifying: None.