

ESHB 1493 - S AMD TO TRAN COMM AMD (S-5448.1/24) **864**
By Senator Padden

PULLED 02/29/2024

1 On page 60, line 19, after "concentration of" strike "0.08" and
2 insert "~~((0.08))~~ 0.06"

3 On page 60, line 37, after "be" strike "0.08" and insert
4 "~~((0.08))~~ 0.06"

5 On page 61, line 16, after "concentration of" strike "0.08" and
6 insert "~~((0.08))~~ 0.06"

7 On page 72, line 14, after "alcohol concentration of" strike
8 "0.08" and insert "~~((0.08))~~ 0.06"

9 On page 76, line 13, after "concentration of" strike "0.08" and
10 insert "~~((0.08))~~ 0.06"

11 On page 76, line 38, after "be" strike "0.08" and insert
12 "~~((0.08))~~ 0.06"

13 On page 77, line 18, after "of" strike "0.08" and insert
14 "~~((0.08))~~ 0.06"

15 On page 78, after line 5, insert the following:

16 **"Sec. 33.** RCW 46.61.506 and 2020 c 80 s 33 are each amended to
17 read as follows:

18 (1) Upon the trial of any civil or criminal action or proceeding
19 arising out of acts alleged to have been committed by any person
20 while driving or in actual physical control of a vehicle while under
21 the influence of intoxicating liquor or any drug, if the person's
22 alcohol concentration is less than ~~((0.08))~~ 0.06 or the person's THC
23 concentration is less than 5.00, it is evidence that may be
24 considered with other competent evidence in determining whether the
25 person was under the influence of intoxicating liquor or any drug.

26 (2)(a) The breath analysis of the person's alcohol concentration
27 shall be based upon grams of alcohol per ~~((two hundred ten))~~ 210
28 liters of breath.

1 (b) The blood analysis of the person's THC concentration shall be
2 based upon nanograms per milliliter of whole blood.

3 (c) The foregoing provisions of this section shall not be
4 construed as limiting the introduction of any other competent
5 evidence bearing upon the question whether the person was under the
6 influence of intoxicating liquor or any drug.

7 (3) Analysis of the person's blood or breath to be considered
8 valid under the provisions of this section or RCW 46.61.502 or
9 46.61.504 shall have been performed according to methods approved by
10 the state toxicologist and by an individual possessing a valid permit
11 issued by the state toxicologist for this purpose. The state
12 toxicologist is directed to approve satisfactory techniques or
13 methods, to supervise the examination of individuals to ascertain
14 their qualifications and competence to conduct such analyses, and to
15 issue permits which shall be subject to termination or revocation at
16 the discretion of the state toxicologist.

17 (4) (a) A breath test performed by any instrument approved by the
18 state toxicologist shall be admissible at trial or in an
19 administrative proceeding if the prosecution or department produces
20 prima facie evidence of the following:

21 (i) The person who performed the test was authorized to perform
22 such test by the state toxicologist;

23 (ii) The person being tested did not vomit or have anything to
24 eat, drink, or smoke for at least (~~(fifteen))~~ 15 minutes prior to
25 administration of the test;

26 (iii) The person being tested did not have any foreign
27 substances, not to include dental work or piercings, fixed or
28 removable, in his or her mouth at the beginning of the (~~(fifteen-~~
29 ~~minute))~~ 15-minute observation period;

30 (iv) Prior to the start of the test, the temperature of any
31 liquid simulator solution utilized as an external standard, as
32 measured by a thermometer approved of by the state toxicologist was
33 (~~(thirty-four))~~ 34 degrees centigrade plus or minus 0.3 degrees
34 centigrade;

35 (v) The internal standard test resulted in the message
36 "verified";

37 (vi) The two breath samples agree to within plus or minus (~~(ten))~~
38 10 percent of their mean to be determined by the method approved by
39 the state toxicologist;

1 (vii) The result of the test of the liquid simulator solution
2 external standard or dry gas external standard result did lie between
3 (~~.072 to .088~~) .055 to .065 inclusive; and

4 (viii) All blank tests gave results of .000.

5 (b) For purposes of this section, "prima facie evidence" is
6 evidence of sufficient circumstances that would support a logical and
7 reasonable inference of the facts sought to be proved. In assessing
8 whether there is sufficient evidence of the foundational facts, the
9 court or administrative tribunal is to assume the truth of the
10 prosecution's or department's evidence and all reasonable inferences
11 from it in a light most favorable to the prosecution or department.

12 (c) Nothing in this section shall be deemed to prevent the
13 subject of the test from challenging the reliability or accuracy of
14 the test, the reliability or functioning of the instrument, or any
15 maintenance procedures. Such challenges, however, shall not preclude
16 the admissibility of the test once the prosecution or department has
17 made a prima facie showing of the requirements contained in (a) of
18 this subsection. Instead, such challenges may be considered by the
19 trier of fact in determining what weight to give to the test result.

20 (5) When a blood test is administered under the provisions of RCW
21 46.20.308, the withdrawal of blood for the purpose of determining its
22 alcohol or drug content may be performed only by a physician licensed
23 under chapter 18.71 RCW; an osteopathic physician licensed under
24 chapter 18.57 RCW; a registered nurse, licensed practical nurse, or
25 advanced registered nurse practitioner licensed under chapter 18.79
26 RCW; a physician assistant licensed under chapter 18.71A RCW; an
27 advanced emergency medical technician or paramedic certified under
28 chapter 18.71 RCW; or a medical assistant-certified or medical
29 assistant-phlebotomist certified under chapter 18.360 RCW, a person
30 holding another credential under Title 18 RCW whose scope of practice
31 includes performing venous blood draws, or a forensic phlebotomist
32 certified under chapter 18.360 RCW. When the blood test is performed
33 outside the state of Washington, the withdrawal of blood for the
34 purpose of determining its alcohol or drug content may be performed
35 by any person who is authorized by the out-of-state jurisdiction to
36 perform venous blood draws. Proof of qualification to draw blood may
37 be established through the department of health's provider credential
38 search. This limitation shall not apply to the taking of breath
39 specimens.

1 (6) When a venous blood sample is performed by a forensic
2 phlebotomist certified under chapter 18.360 RCW, it must be done
3 under the following conditions:

4 (a) If taken at the scene, it must be performed in an ambulance
5 or aid service vehicle licensed by the department of health under
6 chapter 18.73 RCW.

7 (b) The collection of blood samples must not interfere with the
8 provision of essential medical care.

9 (c) The blood sample must be collected using sterile equipment
10 and the skin area of puncture must be thoroughly cleansed and
11 disinfected.

12 (d) The person whose blood is collected must be seated, reclined,
13 or lying down when the blood is collected.

14 (7) The person tested may have a licensed or certified health
15 care provider listed in subsection (5) of this section, or a
16 qualified technician, chemist, or other qualified person of his or
17 her own choosing administer one or more tests in addition to any
18 administered at the direction of a law enforcement officer. The test
19 will be admissible if the person establishes the general
20 acceptability of the testing technique or method. The failure or
21 inability to obtain an additional test by a person shall not preclude
22 the admission of evidence relating to the test or tests taken at the
23 direction of a law enforcement officer.

24 (8) Upon the request of the person who shall submit to a test or
25 tests at the request of a law enforcement officer, full information
26 concerning the test or tests shall be made available to him or her or
27 his or her attorney.

28 **Sec. 34.** RCW 46.20.308 and 2022 c 16 s 38 are each amended to
29 read as follows:

30 (1) Any person who operates a motor vehicle within this state is
31 deemed to have given consent, subject to the provisions of RCW
32 46.61.506, to a test or tests of his or her breath for the purpose of
33 determining the alcohol concentration in his or her breath if
34 arrested for any offense where, at the time of the arrest, the
35 arresting officer has reasonable grounds to believe the person had
36 been driving or was in actual physical control of a motor vehicle
37 while under the influence of intoxicating liquor or any drug or was
38 in violation of RCW 46.61.503.

1 (2) The test or tests of breath shall be administered at the
2 direction of a law enforcement officer having reasonable grounds to
3 believe the person to have been driving or in actual physical control
4 of a motor vehicle within this state while under the influence of
5 intoxicating liquor or any drug or the person to have been driving or
6 in actual physical control of a motor vehicle while having alcohol in
7 a concentration in violation of RCW 46.61.503 in his or her system
8 and being under the age of (~~twenty-one~~) 21. Prior to administering
9 a breath test pursuant to this section, the officer shall inform the
10 person of his or her right under this section to refuse the breath
11 test, and of his or her right to have additional tests administered
12 by any qualified person of his or her choosing as provided in RCW
13 46.61.506. The officer shall warn the driver, in substantially the
14 following language, that:

15 (a) If the driver refuses to take the test, the driver's license,
16 permit, or privilege to drive will be revoked or denied for at least
17 one year; and

18 (b) If the driver refuses to take the test, the driver's refusal
19 to take the test may be used in a criminal trial; and

20 (c) If the driver submits to the test and the test is
21 administered, the driver's license, permit, or privilege to drive
22 will be suspended, revoked, or denied for at least (~~ninety~~) 90 days
23 if:

24 (i) The driver is age (~~twenty-one~~) 21 or over and the test
25 indicates either that the alcohol concentration of the driver's
26 breath is (~~0.08~~) 0.06 or more; or

27 (ii) The driver is under age (~~twenty-one~~) 21 and the test
28 indicates either that the alcohol concentration of the driver's
29 breath is 0.02 or more; or

30 (iii) The driver is under age (~~twenty-one~~) 21 and the driver is
31 in violation of RCW 46.61.502 or 46.61.504; and

32 (d) If the driver's license, permit, or privilege to drive is
33 suspended, revoked, or denied the driver may be eligible to
34 immediately apply for an ignition interlock driver's license.

35 (3) If, following his or her arrest and receipt of warnings under
36 subsection (2) of this section, the person arrested exercises the
37 right, granted herein, by refusing upon the request of a law
38 enforcement officer to submit to a test or tests of his or her
39 breath, no test shall be given except as otherwise authorized by law.

1 (4) Nothing in subsection (1), (2), or (3) of this section
2 precludes a law enforcement officer from obtaining a person's blood
3 to test for alcohol, cannabis, or any drug, pursuant to a search
4 warrant, a valid waiver of the warrant requirement, when exigent
5 circumstances exist, or under any other authority of law. Any blood
6 drawn for the purpose of determining the person's alcohol, cannabis
7 levels, or any drug, is drawn pursuant to this section when the
8 officer has reasonable grounds to believe that the person is in
9 physical control or driving a vehicle under the influence or in
10 violation of RCW 46.61.503.

11 (5) If, after arrest and after any other applicable conditions
12 and requirements of this section have been satisfied, a test or tests
13 of the person's blood or breath is administered and the test results
14 indicate that the alcohol concentration of the person's breath or
15 blood is ~~((0.08))~~ 0.06 or more, or the THC concentration of the
16 person's blood is 5.00 or more, if the person is age ~~((twenty-one))~~
17 21 or over, or that the alcohol concentration of the person's breath
18 or blood is 0.02 or more, or the THC concentration of the person's
19 blood is above 0.00, if the person is under the age of ~~((twenty-one))~~
20 21, or the person refuses to submit to a test, the arresting officer
21 or other law enforcement officer at whose direction any test has been
22 given, or the department, where applicable, if the arrest results in
23 a test of the person's blood, shall:

24 (a) Serve notice in writing on the person on behalf of the
25 department of its intention to suspend, revoke, or deny the person's
26 license, permit, or privilege to drive as required by subsection (6)
27 of this section;

28 (b) Serve notice in writing on the person on behalf of the
29 department of his or her right to a hearing, specifying the steps he
30 or she must take to obtain a hearing as provided by subsection (7) of
31 this section;

32 (c) Serve notice in writing that the license or permit, if any,
33 is a temporary license that is valid for ~~((thirty))~~ 30 days from the
34 date of arrest or from the date notice has been given in the event
35 notice is given by the department following a blood test, or until
36 the suspension, revocation, or denial of the person's license,
37 permit, or privilege to drive is sustained at a hearing pursuant to
38 subsection (7) of this section, whichever occurs first. No temporary
39 license is valid to any greater degree than the license or permit
40 that it replaces; and

1 (d) Immediately notify the department of the arrest and transmit
2 to the department within (~~(seventy-two)~~) 72 hours, except as delayed
3 as the result of a blood test, a sworn report or report under a
4 declaration authorized by chapter 5.50 RCW that states:

5 (i) That the officer had reasonable grounds to believe the
6 arrested person had been driving or was in actual physical control of
7 a motor vehicle within this state while under the influence of
8 intoxicating liquor or drugs, or both, or was under the age of
9 (~~(twenty-one)~~) 21 years and had been driving or was in actual
10 physical control of a motor vehicle while having an alcohol or THC
11 concentration in violation of RCW 46.61.503;

12 (ii) That after receipt of any applicable warnings required by
13 subsection (2) of this section the person refused to submit to a test
14 of his or her breath, or a test was administered and the results
15 indicated that the alcohol concentration of the person's breath or
16 blood was (~~(0.08)~~) 0.06 or more, or the THC concentration of the
17 person's blood was 5.00 or more, if the person is age (~~(twenty-one)~~)
18 21 or over, or that the alcohol concentration of the person's breath
19 or blood was 0.02 or more, or the THC concentration of the person's
20 blood was above 0.00, if the person is under the age of (~~(twenty-~~
21 ~~one)~~) 21; and

22 (iii) Any other information that the director may require by
23 rule.

24 (6) The department of licensing, upon the receipt of a sworn
25 report or report under a declaration authorized by chapter 5.50 RCW
26 under subsection (5)(d) of this section, shall suspend, revoke, or
27 deny the person's license, permit, or privilege to drive or any
28 nonresident operating privilege, as provided in RCW 46.20.3101, such
29 suspension, revocation, or denial to be effective beginning
30 (~~(thirty)~~) 30 days from the date of arrest or from the date notice
31 has been given in the event notice is given by the department
32 following a blood test, or when sustained at a hearing pursuant to
33 subsection (7) of this section, whichever occurs first.

34 (7) A person receiving notification under subsection (5)(b) of
35 this section may, within seven days after the notice has been given,
36 request in writing a formal hearing before the department. The person
37 shall pay a fee of (~~(three hundred seventy-five dollars)~~) \$375 as
38 part of the request. If the request is mailed, it must be postmarked
39 within seven days after receipt of the notification. Upon timely
40 receipt of such a request for a formal hearing, including receipt of

1 the required (~~three hundred seventy five dollar~~) \$375 fee, the
2 department shall afford the person an opportunity for a hearing. The
3 department may waive the required (~~three hundred seventy five~~
4 ~~dollar~~) \$375 fee if the person is an indigent as defined in RCW
5 10.101.010. Except as otherwise provided in this section, the hearing
6 is subject to and shall be scheduled and conducted in accordance with
7 RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the
8 county of the arrest, except that all or part of the hearing may, at
9 the discretion of the department, be conducted by telephone or other
10 electronic means. The hearing shall be held within (~~thirty~~) 30
11 days, excluding Saturdays, Sundays, and legal holidays, following the
12 date of timely receipt of such request for a formal hearing before
13 the department or (~~thirty~~) 30 days, excluding Saturdays, Sundays,
14 and legal holidays following the date notice has been given in the
15 event notice is given by the department following a blood test,
16 unless otherwise agreed to by the department and the person, in which
17 case the action by the department shall be stayed, and any valid
18 temporary license under subsection (5) of this section extended, if
19 the person is otherwise eligible for licensing. Unless otherwise
20 agreed to by the department and the person, the department must give
21 five days notice of the hearing to the person. For the purposes of
22 this section, the scope of the hearing shall cover the issues of
23 whether a law enforcement officer had reasonable grounds to believe
24 the person had been driving or was in actual physical control of a
25 motor vehicle within this state while under the influence of
26 intoxicating liquor or any drug or had been driving or was in actual
27 physical control of a motor vehicle within this state while having
28 alcohol in his or her system in a concentration of 0.02 or more, or
29 THC in his or her system in a concentration above 0.00, if the person
30 was under the age of (~~twenty one~~) 21, whether the person was placed
31 under arrest, and (a) whether the person refused to submit to the
32 test or tests upon request of the officer after having been informed
33 that such refusal would result in the revocation of the person's
34 license, permit, or privilege to drive, or (b) if a test or tests
35 were administered, whether the applicable requirements of this
36 section were satisfied before the administration of the test or
37 tests, whether the person submitted to the test or tests, or whether
38 a test was administered pursuant to a search warrant, a valid waiver
39 of the warrant requirement, when exigent circumstances exist, or
40 under any other authority of law as permitted under this section, and

1 whether the test or tests indicated that the alcohol concentration of
2 the person's breath or blood was (~~(0.08)~~) 0.06 or more, or the THC
3 concentration of the person's blood was 5.00 or more, if the person
4 was age (~~(twenty-one)~~) 21 or over at the time of the arrest, or that
5 the alcohol concentration of the person's breath or blood was 0.02 or
6 more, or the THC concentration of the person's blood was above 0.00,
7 if the person was under the age of (~~(twenty-one)~~) 21 at the time of
8 the arrest. Where a person is found to be in actual physical control
9 of a motor vehicle while under the influence of intoxicating liquor
10 or any drug or was under the age of (~~(twenty-one)~~) 21 at the time of
11 the arrest and was in physical control of a motor vehicle while
12 having alcohol in his or her system in a concentration of 0.02 or THC
13 concentration above 0.00, the person may petition the hearing officer
14 to apply the affirmative defense found in RCW 46.61.504(3) and
15 46.61.503(2). The driver has the burden to prove the affirmative
16 defense by a preponderance of the evidence. The sworn report or
17 report under a declaration authorized by chapter 5.50 RCW submitted
18 by a law enforcement officer is prima facie evidence that the officer
19 had reasonable grounds to believe the person had been driving or was
20 in actual physical control of a motor vehicle within this state while
21 under the influence of intoxicating liquor or drugs, or both, or the
22 person had been driving or was in actual physical control of a motor
23 vehicle within this state while having alcohol in his or her system
24 in a concentration of 0.02 or more, or THC in his or her system in a
25 concentration above 0.00, and was under the age of (~~(twenty-one)~~) 21
26 and that the officer complied with the requirements of this section.

27 A hearing officer shall conduct the hearing, may issue subpoenas
28 for the attendance of witnesses and the production of documents, and
29 shall administer oaths to witnesses. The hearing officer shall not
30 issue a subpoena for the attendance of a witness at the request of
31 the person unless the request is accompanied by the fee required by
32 RCW 5.56.010 for a witness in district court. The sworn report or
33 report under a declaration authorized by chapter 5.50 RCW of the law
34 enforcement officer and any other evidence accompanying the report
35 shall be admissible without further evidentiary foundation and the
36 certifications authorized by the criminal rules for courts of limited
37 jurisdiction shall be admissible without further evidentiary
38 foundation. The person may be represented by counsel, may question
39 witnesses, may present evidence, and may testify. The department

1 shall order that the suspension, revocation, or denial either be
2 rescinded or sustained.

3 (8) If the suspension, revocation, or denial is sustained after
4 such a hearing, the person whose license, privilege, or permit is
5 suspended, revoked, or denied has the right to file a petition in the
6 superior court of the county of arrest to review the final order of
7 revocation by the department in the same manner as an appeal from a
8 decision of a court of limited jurisdiction. Notice of appeal must be
9 filed within (~~thirty~~) 30 days after the date the final order is
10 served or the right to appeal is waived. Notwithstanding RCW
11 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo
12 review, the appeal shall be limited to a review of the record of the
13 administrative hearing. The appellant must pay the costs associated
14 with obtaining the record of the hearing before the hearing officer.
15 The filing of the appeal does not stay the effective date of the
16 suspension, revocation, or denial. A petition filed under this
17 subsection must include the petitioner's grounds for requesting
18 review. Upon granting petitioner's request for review, the court
19 shall review the department's final order of suspension, revocation,
20 or denial as expeditiously as possible. The review must be limited to
21 a determination of whether the department has committed any errors of
22 law. The superior court shall accept those factual determinations
23 supported by substantial evidence in the record: (a) That were
24 expressly made by the department; or (b) that may reasonably be
25 inferred from the final order of the department. The superior court
26 may reverse, affirm, or modify the decision of the department or
27 remand the case back to the department for further proceedings. The
28 decision of the superior court must be in writing and filed in the
29 clerk's office with the other papers in the case. The court shall
30 state the reasons for the decision. If judicial relief is sought for
31 a stay or other temporary remedy from the department's action, the
32 court shall not grant such relief unless the court finds that the
33 appellant is likely to prevail in the appeal and that without a stay
34 the appellant will suffer irreparable injury. If the court stays the
35 suspension, revocation, or denial it may impose conditions on such
36 stay.

37 (9) (a) If a person whose driver's license, permit, or privilege
38 to drive has been or will be suspended, revoked, or denied under
39 subsection (6) of this section, other than as a result of a breath
40 test refusal, and who has not committed an offense for which he or

1 she was granted a deferred prosecution under chapter 10.05 RCW,
2 petitions a court for a deferred prosecution on criminal charges
3 arising out of the arrest for which action has been or will be taken
4 under subsection (6) of this section, or notifies the department of
5 licensing of the intent to seek such a deferred prosecution, then the
6 license suspension or revocation shall be stayed pending entry of the
7 deferred prosecution. The stay shall not be longer than (~~one hundred~~
8 ~~fifty~~) 150 days after the date charges are filed, or two years after
9 the date of the arrest, whichever time period is shorter. If the
10 court stays the suspension, revocation, or denial, it may impose
11 conditions on such stay. If the person is otherwise eligible for
12 licensing, the department shall issue a temporary license, or extend
13 any valid temporary license under subsection (5) of this section, for
14 the period of the stay. If a deferred prosecution treatment plan is
15 not recommended in the report made under RCW 10.05.050, or if
16 treatment is rejected by the court, or if the person declines to
17 accept an offered treatment plan, or if the person violates any
18 condition imposed by the court, then the court shall immediately
19 direct the department to cancel the stay and any temporary license or
20 extension of a temporary license issued under this subsection.

21 (b) A suspension, revocation, or denial imposed under this
22 section, other than as a result of a breath test refusal, shall be
23 stayed if the person is accepted for deferred prosecution as provided
24 in chapter 10.05 RCW for the incident upon which the suspension,
25 revocation, or denial is based. If the deferred prosecution is
26 terminated, the stay shall be lifted and the suspension, revocation,
27 or denial reinstated. If the deferred prosecution is completed, the
28 stay shall be lifted and the suspension, revocation, or denial
29 canceled.

30 (c) The provisions of (b) of this subsection relating to a stay
31 of a suspension, revocation, or denial and the cancellation of any
32 suspension, revocation, or denial do not apply to the suspension,
33 revocation, denial, or disqualification of a person's commercial
34 driver's license or privilege to operate a commercial motor vehicle.

35 (10) When it has been finally determined under the procedures of
36 this section that a nonresident's privilege to operate a motor
37 vehicle in this state has been suspended, revoked, or denied, the
38 department shall give information in writing of the action taken to
39 the motor vehicle administrator of the state of the person's
40 residence and of any state in which he or she has a license.

1 **Sec. 35.** RCW 46.20.3101 and 2020 c 330 s 6 are each amended to
2 read as follows:

3 Pursuant to RCW 46.20.308, the department shall suspend, revoke,
4 or deny the arrested person's license, permit, or privilege to drive
5 as follows:

6 (1) In the case of a person who has refused a test or tests:

7 (a) For a first refusal within seven years, where there has not
8 been a previous incident within seven years that resulted in
9 administrative action under this section, revocation or denial for
10 one year;

11 (b) For a second or subsequent refusal within seven years, or for
12 a first refusal where there has been one or more previous incidents
13 within seven years that have resulted in administrative action under
14 this section, revocation or denial for two years or until the person
15 reaches age (~~(twenty-one)~~) 21, whichever is longer.

16 (2) In the case of an incident where a person has submitted to or
17 been administered a test or tests indicating that the alcohol
18 concentration of the person's breath or blood was (~~(0.08)~~) 0.06 or
19 more, or that the THC concentration of the person's blood was 5.00 or
20 more:

21 (a) For a first incident within seven years, where there has not
22 been a previous incident within seven years that resulted in
23 administrative action under this section, suspension for (~~(ninety)~~)
24 90 days, unless the person successfully completes or is enrolled in a
25 pretrial 24/7 sobriety program;

26 (b) For a second or subsequent incident within seven years,
27 revocation or denial for two years.

28 (3) In the case of an incident where a person under age (~~(twenty-~~
29 ~~one)~~) 21 has submitted to or been administered a test or tests
30 indicating that the alcohol concentration of the person's breath or
31 blood was 0.02 or more, or that the THC concentration of the person's
32 blood was above 0.00:

33 (a) For a first incident within seven years, suspension or denial
34 for (~~(ninety)~~) 90 days;

35 (b) For a second or subsequent incident within seven years,
36 revocation or denial for one year or until the person reaches age
37 (~~(twenty-one)~~) 21, whichever is longer.

38 (4) The department shall grant credit on a day-for-day basis for
39 a suspension, revocation, or denial imposed under this section for
40 any portion of a suspension, revocation, or denial already served

1 under RCW 46.61.5055 arising out of the same incident. If a person
2 has already served a suspension, revocation, or denial under RCW
3 46.61.5055 for a period equal to or greater than the period imposed
4 under this section, the department shall provide notice of full
5 credit, shall provide for no further suspension or revocation under
6 this section, and shall impose no additional reissue fees for this
7 credit.

8 **Sec. 36.** RCW 46.25.090 and 2023 c 35 s 6 are each amended to
9 read as follows:

10 (1) A person is disqualified from driving a commercial motor
11 vehicle for a period of not less than one year if a report has been
12 received by the department pursuant to RCW 46.20.308 or 46.25.120, or
13 if the person has been convicted of a first violation, within this or
14 any other jurisdiction, of:

15 (a) Driving a motor vehicle under the influence of alcohol or any
16 drug;

17 (b) Driving a commercial motor vehicle while the alcohol
18 concentration in the person's system is 0.04 or more or any
19 measurable amount of THC concentration, or driving a noncommercial
20 motor vehicle while the alcohol concentration in the person's system
21 is (~~0.08~~) 0.06 or more, or is 0.02 or more if the person is under
22 age 21, or with a THC concentration of 5.00 nanograms per milliliter
23 of whole blood or more, or a THC concentration above 0.00 if the
24 person is under the age of 21, as determined by any testing methods
25 approved by law in this state or any other state or jurisdiction;

26 (c) Leaving the scene of an accident involving a motor vehicle
27 driven by the person;

28 (d) Using a motor vehicle in the commission of a felony;

29 (e) Refusing to submit to a test or tests to determine the
30 driver's alcohol concentration or the presence of any drug while
31 driving a motor vehicle;

32 (f) Driving a commercial motor vehicle when, as a result of prior
33 violations committed while operating a commercial motor vehicle, the
34 driver's commercial driver's license is revoked, suspended, or
35 canceled, or the driver is disqualified from operating a commercial
36 motor vehicle;

37 (g) Causing a fatality through the negligent operation of a
38 commercial motor vehicle, including but not limited to the crimes of
39 vehicular homicide and negligent homicide.

1 If any of the violations set forth in this subsection occurred
2 while transporting hazardous material, the person is disqualified for
3 a period of not less than three years.

4 (2) A person is disqualified for life if it has been determined
5 that the person has committed or has been convicted of two or more
6 violations of any of the offenses specified in subsection (1) of this
7 section, or any combination of those offenses, arising from two or
8 more separate incidents.

9 (3) The department may adopt rules, in accordance with federal
10 regulations, establishing guidelines, including conditions, under
11 which a disqualification for life under subsection (2) of this
12 section may be reduced to a period of not less than 10 years.

13 (4) A person is disqualified from driving a commercial motor
14 vehicle for life who:

15 (a) Uses a motor vehicle in the commission of a felony involving
16 the manufacture, distribution, or dispensing of a controlled
17 substance, as defined by chapter 69.50 RCW, or possession with intent
18 to manufacture, distribute, or dispense a controlled substance, as
19 defined by chapter 69.50 RCW; or

20 (b) Uses a motor vehicle in the commission of any trafficking
21 offense under RCW 9A.40.100, which offenses are deemed consistent
22 with felonies involving severe forms of trafficking in persons as
23 described by the federal motor carrier safety administration.

24 (5)(a) A person is disqualified from driving a commercial motor
25 vehicle for a period of:

26 (i) Not less than 60 days if:

27 (A) Convicted of or found to have committed a second serious
28 traffic violation while driving a commercial motor vehicle; or

29 (B) Convicted of reckless driving, where there has been a prior
30 serious traffic violation; or

31 (ii) Not less than 120 days if:

32 (A) Convicted of or found to have committed a third or subsequent
33 serious traffic violation while driving a commercial motor vehicle;
34 or

35 (B) Convicted of reckless driving, where there has been two or
36 more prior serious traffic violations.

37 (b) The disqualification period under (a)(ii) of this subsection
38 must be in addition to any other previous period of disqualification.

39 (c) For purposes of determining prior serious traffic violations
40 under this subsection, each conviction of or finding that a driver

1 has committed a serious traffic violation while driving a commercial
2 motor vehicle or noncommercial motor vehicle, arising from a separate
3 incident occurring within a three-year period, must be counted.

4 (6) A person is disqualified from driving a commercial motor
5 vehicle for a period of:

6 (a) Not less than 180 days nor more than one year if convicted of
7 or found to have committed a first violation of an out-of-service
8 order while driving a commercial vehicle;

9 (b) Not less than two years nor more than five years if, during a
10 10-year period, the person is convicted of or is found to have
11 committed two violations of out-of-service orders while driving a
12 commercial motor vehicle in separate incidents;

13 (c) Not less than three years nor more than five years if, during
14 a 10-year period, the person is convicted of or is found to have
15 committed three or more violations of out-of-service orders while
16 driving commercial motor vehicles in separate incidents;

17 (d) Not less than 180 days nor more than two years if the person
18 is convicted of or is found to have committed a first violation of an
19 out-of-service order while transporting hazardous materials, or while
20 operating motor vehicles designed to transport 16 or more passengers,
21 including the driver. A person is disqualified for a period of not
22 less than three years nor more than five years if, during a 10-year
23 period, the person is convicted of or is found to have committed
24 subsequent violations of out-of-service orders, in separate
25 incidents, while transporting hazardous materials, or while operating
26 motor vehicles designed to transport ((~~sixteen~~)) 16 or more
27 passengers, including the driver.

28 (7)(a) A person is disqualified from driving a commercial motor
29 vehicle for the period of time specified in (b) of this subsection if
30 he or she is convicted of or is found to have committed one of the
31 following six offenses at a railroad-highway grade crossing while
32 operating a commercial motor vehicle in violation of a federal,
33 state, or local law or regulation:

34 (i) For drivers who are not required to always stop, failing to
35 slow down and check that the tracks are clear of an approaching train
36 or other on-track equipment;

37 (ii) For drivers who are not required to always stop, failing to
38 stop before reaching the crossing, if the tracks are not clear;

39 (iii) For drivers who are always required to stop, failing to
40 stop before driving onto the crossing;

1 (iv) For all drivers, failing to have sufficient space to drive
2 completely through the crossing without stopping;

3 (v) For all drivers, failing to obey a traffic control device or
4 the directions of an enforcement officer at the crossing;

5 (vi) For all drivers, failing to negotiate a crossing because of
6 insufficient undercarriage clearance.

7 (b) A person is disqualified from driving a commercial motor
8 vehicle for a period of:

9 (i) Not less than 60 days if the driver is convicted of or is
10 found to have committed a first violation of a railroad-highway grade
11 crossing violation;

12 (ii) Not less than 120 days if the driver is convicted of or is
13 found to have committed a second railroad-highway grade crossing
14 violation in separate incidents within a three-year period;

15 (iii) Not less than one year if the driver is convicted of or is
16 found to have committed a third or subsequent railroad-highway grade
17 crossing violation in separate incidents within a three-year period.

18 (8) A person is disqualified from driving a commercial motor
19 vehicle for not more than one year if a report has been received by
20 the department from the federal motor carrier safety administration
21 that the person's driving has been determined to constitute an
22 imminent hazard as defined by 49 C.F.R. 383.5. A person who is
23 simultaneously disqualified from driving a commercial motor vehicle
24 under this subsection and under other provisions of this chapter, or
25 under 49 C.F.R. 383.52, shall serve those disqualification periods
26 concurrently.

27 (9) Within 10 days after suspending, revoking, or canceling a
28 commercial driver's license or disqualifying a driver from operating
29 a commercial motor vehicle, the department shall update its records
30 to reflect that action.

31 **Sec. 37.** RCW 38.38.760 and 2009 c 378 s 24 are each amended to
32 read as follows:

33 (1) Any person subject to this code who:

34 (a) Operates or physically controls any vehicle, aircraft, or
35 vessel in a reckless or wanton manner or while impaired by a
36 substance described in RCW 38.38.762; or

37 (b) Operates or is in actual physical control of any vehicle,
38 aircraft, or vessel while drunk or when the alcohol concentration in

1 the person's blood or breath is equal to or exceeds the applicable
2 limit under subsection (2) of this section; or

3 (c) Operates or is in actual physical control of any vehicle,
4 aircraft, or vessel in a reckless or wanton manner
5 shall be punished as a court-martial may direct.

6 (2) For purposes of subsection (1) of this section, the blood
7 alcohol content limit with respect to alcohol concentration in a
8 person's blood is (~~(0.08)~~) 0.06 grams of alcohol per (~~(one hundred)~~)
9 100 milliliters of blood and with respect to alcohol concentration in
10 a person's breath is (~~(0.08)~~) 0.06 grams of alcohol per (~~(two hundred~~
11 ~~ten)~~) 210 liters of breath, as shown by chemical analysis.

12 (3) For purposes of this section, "blood alcohol content limit"
13 means the amount of alcohol concentration in a person's blood or
14 breath at which operation or control of a vehicle, aircraft, or
15 vessel is prohibited.

16 **Sec. 38.** RCW 79A.60.040 and 2022 c 16 s 136 are each amended to
17 read as follows:

18 (1) It is unlawful for any person to operate a vessel in a
19 reckless manner.

20 (2) It is unlawful for a person to operate a vessel while under
21 the influence of intoxicating liquor, cannabis, or any drug. A person
22 is considered to be under the influence of intoxicating liquor,
23 cannabis, or any drug if, within two hours of operating a vessel:

24 (a) The person has an alcohol concentration of (~~(0.08)~~) 0.06 or
25 higher as shown by analysis of the person's breath or blood made
26 under RCW 46.61.506; or

27 (b) The person has a THC concentration of 5.00 or higher as shown
28 by analysis of the person's blood made under RCW 46.61.506; or

29 (c) The person is under the influence of or affected by
30 intoxicating liquor, cannabis, or any drug; or

31 (d) The person is under the combined influence of or affected by
32 intoxicating liquor, cannabis, and any drug.

33 (3) The fact that any person charged with a violation of this
34 section is or has been entitled to use such drug under the laws of
35 this state shall not constitute a defense against any charge of
36 violating this section.

37 (4)(a) Any person who operates a vessel within this state is
38 deemed to have given consent, subject to the provisions of RCW
39 46.61.506, to a test or tests of the person's breath for the purpose

1 of determining the alcohol concentration in the person's breath if
2 arrested for any offense where, at the time of the arrest, the
3 arresting officer has reasonable grounds to believe the person was
4 operating a vessel while under the influence of intoxicating liquor
5 or a combination of intoxicating liquor and any other drug.

6 (b) When an arrest results from an accident in which there has
7 been serious bodily injury to another person or death or the
8 arresting officer has reasonable grounds to believe the person was
9 operating a vessel while under the influence of THC or any other
10 drug, a blood test may be administered with the consent of the
11 arrested person and a valid waiver of the warrant requirement or
12 without the consent of the person so arrested pursuant to a search
13 warrant or when exigent circumstances exist.

14 (c) Neither consent nor this section precludes a police officer
15 from obtaining a search warrant for a person's breath or blood.

16 (d) An arresting officer may administer field sobriety tests when
17 circumstances permit.

18 (5) The test or tests of breath must be administered pursuant to
19 RCW 46.20.308. The officer shall warn the person that if the person
20 refuses to take the test, the person will be issued a class 1 civil
21 infraction under RCW 7.80.120.

22 (6) A violation of subsection (1) of this section is a
23 misdemeanor. A violation of subsection (2) of this section is a gross
24 misdemeanor. In addition to the statutory penalties imposed, the
25 court may order the defendant to pay restitution for any damages or
26 injuries resulting from the offense.

27 (7) For the purposes of this subsection, "cannabis" has the
28 meaning provided in RCW 69.50.101.

29 NEW SECTION. **Sec. 39.** A new section is added to chapter 43.59
30 RCW to read as follows:

31 The Washington traffic safety commission shall develop and
32 implement a public information campaign related to this act. In
33 developing and implementing the public information campaign, the
34 commission must:

35 (1) Ensure television, radio, and online advertisements are
36 provided in all areas of the state;

37 (2) Include multiple print advertisements in the largest
38 newspapers in each county;

1 (3) Provide content of the public information campaign in the top
2 nine most significant non-English-speaking languages spoken in the
3 state;

4 (4) Consider equity outcomes on overburdened communities as
5 defined in RCW 70A.02.010; and

6 (5) Ensure that at least 10 percent of the advertisements are
7 developed in conjunction with in-state hospitality stakeholders and
8 educate drivers about safe alternatives to driving while patronizing
9 hospitality businesses.

10 NEW SECTION. **Sec. 40.** A new section is added to chapter 66.44
11 RCW to read as follows:

12 The legislature finds that current civil law relating to civil
13 liability is that a licensed commercial vendor or quasi-commercial
14 vendor owes a duty to third persons not to sell, serve, or furnish
15 alcohol to a person who is apparently under the influence of alcohol,
16 or who is obviously intoxicated. This current civil law is both
17 statutory and also developed in case law. The legislature further
18 finds that civil liability to third persons under the civil law does
19 not depend upon a finding of the blood or breath alcohol
20 concentration. Therefore, nothing in this act shall be construed to
21 change current civil law for civil liability of a licensed commercial
22 vendor or quasi-commercial vendor.

23 NEW SECTION. **Sec. 41.** A new section is added to chapter 66.08
24 RCW to read as follows:

25 (1) The Washington state institute for public policy must conduct
26 an evaluation of the impacts of this act during the first two years
27 of implementation. By March 1, 2027, the institute must submit a
28 report to the appropriate committees of the legislature detailing the
29 results of its evaluation. The evaluation must include, but is not
30 limited to, the impact of this act on:

31 (a) The number of serious and fatal traffic accidents;

32 (b) Driving under the influence arrests and adjudications for
33 driving under the influence offenses;

34 (c) Equity outcomes on overburdened communities as defined in RCW
35 70A.02.010;

36 (d) Sales and other business effects on the hospitality industry
37 in the state; and

1 (e) Sales and other business effects on breweries, wineries, and
2 distilleries in the state.

3 (2) This section expires November 1, 2027."

4 Renumber the remaining sections consecutively and correct any
5 internal references accordingly.

6 On page 78, line 17, after "46.61.5055," strike "and 46.61.504"
7 and insert "46.61.504, 46.61.506, 46.20.308, 46.20.3101, 46.25.090,
8 38.38.760, and 79A.60.040"

9 On page 78, line 18, after "10.05 RCW;" insert "adding a new
10 section to chapter 43.59 RCW; adding a new section to chapter 66.44
11 RCW; adding a new section to chapter 66.08 RCW;"

12 On page 78, line 19, after "date;" insert "providing an
13 expiration date;"

EFFECT: (1) Reduces the breath or blood alcohol concentration
limit for operating a motor vehicle from 0.08 to 0.06.

(2) Reduces the breath or blood alcohol concentration limit for
physical control of a motor vehicle from 0.08 to 0.06.

(3) Requires the Washington Traffic Safety Commission to develop
and implement a public information campaign related to the act.

(4) Provides legislative findings regarding the unchanged civil
liability for licensed commercial vendors or quasi-commercial vendors
who owe a duty to third persons not to sell, serve, or furnish
alcohol to a person who is apparently under the influence of alcohol,
or who is obviously intoxicated.

(5) Requires the Washington State Institute for Public Policy to
conduct an evaluation of the impacts of the act during the first two
years by March 1, 2027.

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