

SENATE BILL REPORT

SB 5002

As Reported by Senate Committee On:
Law & Justice, January 19, 2023
Transportation, February 9, 2023

Title: An act relating to alcohol concentration.

Brief Description: Concerning alcohol concentration.

Sponsors: Senators Lovick, Lias, Dhingra, Kuderer, McCune, Nguyen, Rolfes, Shewmake, Valdez, Wilson, C., Wilson, J. and Wilson, L..

Brief History:

Committee Activity: Law & Justice: 1/16/23, 1/19/23 [DPS-TRAN, w/oRec].
Transportation: 1/30/23, 2/09/23 [DP2S, w/oRec].

Brief Summary of Second Substitute Bill

- Reduces the breath or blood alcohol concentration limit for operating a motor vehicle from 0.08 to 0.05.
- Reduces the breath or blood alcohol concentration limit for physical control of a motor vehicle from 0.08 to 0.05.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5002 be substituted therefor, and the substitute bill do pass and be referred to Committee on Transportation.

Signed by Senators Dhingra, Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Valdez, Wagoner and Wilson, L..

Minority Report: That it be referred without recommendation.

Signed by Senators Trudeau, Vice Chair; Salomon and Torres.

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

Staff: Joe McKittrick (786-7287)

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Second Substitute Senate Bill No. 5002 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Lias, Chair; Lovick, Vice Chair; Shewmake, Vice Chair; Holy, Assistant Ranking Member; Cleveland, Hawkins, Kauffman, Lovelett, MacEwen, Nobles, Padden, Randall, Valdez and Wilson, C..

Minority Report: That it be referred without recommendation.

Signed by Senators King, Ranking Member; Fortunato and Wilson, J..

Staff: Bryon Moore (786-7726)

Background: Impaired Driving. A person commits the crime of driving while under the influence (DUI) of intoxicating liquor, cannabis, or any drug if the person drives a motor vehicle:

- with a breath or blood alcohol concentration of 0.08 percent or higher;
- with a THC concentration of five or higher in their blood; or
- under the influence or a combined influence of intoxicating liquor, marijuana, and any drug.

The same factors apply for the crime of being in physical control (PC) of a motor vehicle while under the influence of intoxicating liquor, marijuana, or any drug if the person has actual physical control of a vehicle.

A DUI or PC criminal offense is punishable as a gross misdemeanor if the person has fewer than three prior DUI or PC convictions within seven years. It becomes a felony offense if a person has three or more prior convictions within ten years.

Summary of Bill (Second Substitute): Impaired Driving. The breath or blood alcohol concentration limit of 0.08 percent or higher is reduced to 0.05 or higher for a person guilty of:

- driving while under the influence of intoxicating liquor, cannabis, or any drug; or
- being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug.

Public Information Campaign. The Washington Traffic Safety Commission (WTSC) must develop and implement a public information campaign related to the act. In developing and implementing the public information campaign, WTSC must:

- ensure television, radio, and online advertisements are provided in all areas of the state;
- include multiple print advertisements in the largest newspapers in each county;

- provide content of the public information campaign in the top nine most significant non-English-speaking languages spoken in the state;
- consider equity outcomes on overburdened communities as defined in RCW 70A.02.010; and
- ensure that at least 10 percent of the advertisements are developed in conjunction with in-state hospitality stakeholders and educate drivers about safe alternatives to driving while patronizing hospitality businesses.

Civil Liability. The Legislature finds that:

- current civil law relating to civil liability is that a licensed commercial vendor or quasi-commercial vendor owes 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;
- this current civil law is both statutory and also developed in case law; and
- civil liability to third persons under the civil law does not depend upon a finding of the blood or breath alcohol concentration.

Nothing in this act shall be construed to change current civil law for civil liability of a licensed commercial vendor or quasi-commercial vendor.

Evaluation of the Act. The Washington State Institute for Public Policy must conduct an evaluation of the impacts of this act during the first two years of implementation. By October 1, 2026, the institute must submit a report to the appropriate committees of the Legislature detailing the results of its evaluation. The evaluation must include, but is not limited to, the impact of the act on:

- the number of serious and fatal traffic accidents;
- driving under the influence arrests and adjudications for driving under the influence offenses;
- equity outcomes on overburdened communities;
- sales and other business effects on the hospitality industry in the state; and
- sales and other business effects on breweries, wineries, and distilleries in the state.

EFFECT OF CHANGES MADE BY TRANSPORTATION COMMITTEE (Second Substitute):

- Requires the Washington State Institute for Public Policy to conduct an evaluation of the impacts of the act during the first two years by October 1, 2026.
- Requires the Washington Traffic Safety Commission to develop and implement a public information campaign related to the act.
- Provides legislative findings regarding current civil liability for a licensed commercial vendor or quasi-commercial vendor owing 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.
- Provides legislative findings that civil liability to third persons under the civil law

- does not depend upon a finding of the blood or breath alcohol concentration.
- States nothing in this act shall be construed to change current civil law for civil liability of a licensed commercial vendor or quasi-commercial vendor.
 - Changes the effective date of the act from December 31, 2023, to July 1, 2024.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Adds sections 6 and 7 to amend additional laws related to testing and license suspension for driving under the influence by lowering the BAC from .08 to .05 consistent with the bill.
- Provides a delayed effective date of December 31st, 2023.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 10, 2024.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on July 1, 2024.

Staff Summary of Public Testimony on Original Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: Our roads are not as safe as they could or should be. The people of our state should be and feel safe. Drunk driving is impacting the safety of our communities, and something must be done about it. Drunk driving collisions are avoidable. Impairment starts with the first drink. Drunk driving is the offense, and this bill must be the defense. Drivers experience cognitive behavior and physical impairment with blood alcohol content level of 0.05, and that worsens as content level increases. Lower blood alcohol content threshold means less crashes and crimes, no increase in arrest, bars will still make money. This will not affect the tourist industry. Washington is fifth in the nation for increased percentage of traffic fatalities. Washington had over 700 traffic fatalities in 2022. Half of them involved impaired drivers, and one-third involved alcohol. Lowering blood alcohol content limit to 0.05 will save lives. Washington should join Utah, who has already established this limit, and saw traffic fatalities and alcohol impaired driving decrease. People will self-regulate. This is a proven countermeasure. It acts as a broad deterrent. Washington wants zero deaths and injuries on roads. This is a necessary step.

CON: There is no discernable way to recognize signs of intoxication at 0.05 and national training standards teach how to identify physical traits and behaviors of intoxication. The 40% BAC threshold reduction will put thousands of businesses and tens of thousands of employees at new risk when there are no tools to assist them. A change to 0.05 BAC would mean Washington wineries would not be able to compete in the global marketplace. This bill will hurt small business owners. It would be better to divert resources to target repeat

offenders and high BAC drivers.

OTHER: Evidence indicates that this bill would likely lead to some drivers becoming aware of the 0.05 per se blood alcohol content limit, which would likely lead to some people modifying alcohol, impaired driving behaviors, and some reduction in alcohol impaired driving crashes. Research indicates the persons decision to comply with this limit depends on their underlying knowledge, attitudes and beliefs, and perceived likelihood of enforcement. It is impossible to predict how many may modify alcohol impaired driving as a result. Most US research has evaluated the impact of lowering the BAC from 0.1 to 0.08 and further lowering the BAC may not have the same level of impact. Evidence from Utah may not be generalizable to Washington due to differences in drinking culture, alcohol, environment, and alcohol impaired driving. The extent of the impact depends on drivers modifying behavior, and it is not possible to quantify the number of drivers that will comply with the law. It is unknown how the bill would impact decisions of arrest, prosecution, and adjudication.

Persons Testifying (Law & Justice): PRO: Senator John Lovick, Prime Sponsor; Amy Freedheim; Dennis Maughan, Mothers Against Drunk Driving; Jane Terry, National Safety Council; Stephanie Shaw, Safety Advocate on behalf of the National Transportation Safety Board (NTSB); Linda Thompson, Washington Association for Substance Misuse and Violence Prevention; Shelly Baldwin, Washington Traffic Safety Commission; James McMahan, WA Assoc Sheriffs & Police Chiefs; Tony Gomez; Sheri Call, Washington Trucking Associations.

CON: Julia Gorton, Washington Hospitality Association; Josh McDonald, Washington Wine Institute.

OTHER: Lindsay Herendeen, State Board of Health.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on First Substitute (Transportation): *The committee recommended a different version of the bill than what was heard.* PRO: Traffic fatalities are at a 30 year high. A large percentage of these traffic fatalities are associated with drug and alcohol impaired drivers. Drunk driving deaths and accidents are preventable. This bill is about saying drinking and then driving are no longer acceptable. Drunk driving is the offense and this bill is about creating a better defense against it. The negative consequences of impaired driving are felt across the state. Impairment starts at the first drink and it has been estimated that a driver with a .05 BAC are 7 times more at risk to be involved in accidents. The purpose of the law is to not make more arrests, but to change driver behavior. The public education campaign associated with the .05 change can be funded with federal funds. The desired outcome is for people to do additional self-regulation and chose transportation alternatives after consuming any amount of alcohol. Utah has made this change and the result has reduced fatalities and accidents without negatively impacting restaurants, bars, and tourism in the state. Washington should be bold

in adopting this change.

CON: There is no compelling information that this change works and will actually result in fewer fatalities and accidents. While Utah saw short term reductions in alcohol related deaths and accidents, this has proven to be short term and their trends have since reversed. There is no discernable way to recognize signs of intoxication at 0.05 and this will increase the liability of the hospitality industry in the state. The 40% BAC threshold reduction will have negative consequences for the restaurants and bars in the state. This change will harm wineries, brewers, and distillers in the state without achieving the desired public safety outcomes. There are more effective ways to address the challenge of impaired driving, such as focusing on better enforcement of repeat offenders and high BAC impaired drivers.

OTHER: Evidence indicates that this bill would likely lead to some drivers becoming aware of the 0.05 per se blood alcohol content limit, which would likely lead to some people modifying alcohol, impaired driving behaviors, and some reduction in alcohol impaired driving crashes. It is impossible to predict how many may modify alcohol impaired driving as a result. Most US research has evaluated the impact of lowering the BAC from 0.1 to 0.08 and further lowering the BAC may not have the same level of impact. Evidence from Utah may not be generalizable to Washington.

Persons Testifying (Transportation): PRO: Senator John Lovick, Prime Sponsor; Timothy Knopf; Debbie Driver, Governor Inslee's Office; Shelly Baldwin, Washington Traffic Safety Commission; Captain Neil Weaver, Washington State Patrol; Amy Freedheim, Senior Deputy Prosecutor King County - Felony Traffic; Sheri Call, Washington Trucking Associations; James McMahan, WA Assoc Sheriffs & Police Chiefs; Linda Thompson, Washington Association for Substance Misuse and Violence Prevention (WASAVP); Michelle Gajda, National Safety Council; Stephanie Shaw, Stephanie Shaw, Safety Advocate on behalf of the National Transportation Safety Board (NTSB).

CON: Julia Gorton, Washington Hospitality Association; Daniel Olson, Washington Brewers Guild; Josh McDonald, Washington Wine Institute; Jerome Brady.

OTHER: Lindsay Herendeen, State Board of Health.

Persons Signed In To Testify But Not Testifying (Transportation): No one.