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HOUSE BILL 1339

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State of Washington

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By Representatives Fitzgibbon, Hope, Rolfes, Appleton, Billig, Lias, Frockt, Haigh, Cody, Goodman, Moeller, Pedersen, and Kenney

Read first time 01/19/11. Referred to Committee on Judiciary.

1 AN ACT Relating to negligent driving resulting in substantial  
2 bodily harm, great bodily harm, or death of a vulnerable user of a  
3 public way; reenacting and amending RCW 46.20.342; adding a new section  
4 to chapter 46.61 RCW; creating a new section; prescribing penalties;  
5 and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.61 RCW  
8 to read as follows:

9 (1) A person commits negligent driving in the second degree with a  
10 vulnerable user victim if, under circumstances constituting negligent  
11 driving in the second degree, as defined in RCW 46.61.525, he or she  
12 proximately causes the death, great bodily harm, or substantial bodily  
13 harm of a vulnerable user of a public way.

14 (2) The law enforcement officer or prosecuting authority issuing  
15 the notice of infraction for an offense under this section shall state  
16 on the notice of infraction that the offense was a proximate cause of  
17 death, great bodily harm, or substantial bodily harm, as defined in RCW  
18 9A.04.110, of a vulnerable user of a public way. The court shall  
19 notify the person in writing of the time, place, and date of the

1 hearing, and that date shall not be sooner than seven days from the  
2 date of the notice, except by agreement. The form for the notice of  
3 traffic infraction under this section shall be prescribed by rule of  
4 the supreme court and, in addition to the requirements of RCW  
5 46.63.060, shall:

6 (a) State that a hearing will be scheduled by the court to  
7 determine the penalties under subsection (3) or (4) of this section  
8 and, if necessary, provide an opportunity for the person to contest the  
9 determination that the offense has been committed;

10 (b) State that (i) the person named in the notice of infraction is  
11 required to appear at the scheduled hearing regardless of whether the  
12 person named in the notice contests the determination that the offense  
13 has been committed, (ii) failure to appear at the hearing will result  
14 in the suspension of the person's driver's license or driving privilege  
15 for a minimum of ninety days and continue thereafter until any  
16 penalties imposed pursuant to this chapter have been satisfied; and  
17 (iii) failure to appear at the hearing will result in the imposition of  
18 a fine fixed by the court in an amount of at least one thousand dollars  
19 and not to exceed five thousand dollars; and

20 (c) Include a statement of the monetary and nonmonetary penalties  
21 established and available under this section and any other applicable  
22 law.

23 (3) A person found to have committed negligent driving in the  
24 second degree with a vulnerable user victim shall be required to:

25 (a) Pay a penalty of two hundred fifty dollars;

26 (b) Complete a traffic safety course approved by the court;

27 (c) Perform up to one hundred hours of community service, which  
28 must be approved by the court and must include activities related to  
29 driver improvement and providing public education on traffic safety;  
30 and

31 (d) Submit certification to the court establishing that the  
32 requirements of this subsection have been met.

33 (4) In lieu of the penalties imposed under subsection (3) of this  
34 section, a person found to have committed a violation of this section  
35 may elect to:

36 (a) Pay a fine fixed by the court in an amount of at least one  
37 thousand dollars and not to exceed five thousand dollars; and

38 (b) Have his or her driving privileges suspended for ninety days.

1 (5) If a person found to have committed a violation of this section  
2 does not complete all requirements of subsection (3) of this section  
3 within one year of the date the violation of this section is found  
4 committed and does not elect the penalties described in subsection (4)  
5 of this section:

6 (a) The court shall impose a fine in an amount of at least one  
7 thousand dollars and not to exceed five thousand dollars; and

8 (b) The person's driving privileges shall be suspended for ninety  
9 days.

10 For good cause shown, the court may extend the period of time in  
11 which the person must complete the requirements of subsection (3) of  
12 this section before imposing the fine and driving privilege suspension  
13 provided for in this subsection.

14 (6) If a person issued a notice of infraction for a violation of  
15 this section fails to appear for a hearing scheduled pursuant to  
16 subsection (2)(a) of this section:

17 (a) The court shall enter an order assessing the monetary penalty;

18 (b) The person's driving privileges shall be suspended for ninety  
19 days; and

20 (c) The court shall notify the department in accordance with RCW  
21 46.20.270 of the failure to respond to the notice of infraction or to  
22 appear at a scheduled hearing.

23 For good cause shown, the court may reschedule or continue the  
24 hearing scheduled pursuant to subsection (2)(a) of this section.

25 (7) An offense under this section is a traffic infraction. To the  
26 extent not inconsistent with this section, the provisions of chapter  
27 46.63 RCW shall apply to infractions under this section. Procedures  
28 for the conduct of all hearings provided for in this section may be  
29 established by rule of the supreme court.

30 (8) If a person's driving privileges are suspended pursuant to  
31 subsection (4)(b), (5)(b), or (6)(b) of this section, the court shall  
32 send notice of such suspension to the department.

33 (9) For the purposes of this section, "vulnerable user of a public  
34 way" means: (a) A pedestrian; (b) a person riding an animal; or (c) a  
35 person operating any of the following on a public way:

36 (i) A farm tractor or implement of husbandry without an enclosed  
37 shell;

38 (ii) A skateboard;

- 1 (iii) Roller skates or in-line skates;
- 2 (iv) A scooter;
- 3 (v) A bicycle or tricycle;
- 4 (vi) An electric assist bicycle;
- 5 (vii) An electric personal assistive mobility device; or
- 6 (viii) A wheelchair conveyance or other personal mobility device.
- 7 (10) Any act prohibited by this section that also constitutes a
- 8 crime under any other law of this state may be the basis of prosecution
- 9 under such other law notwithstanding that it may also be the basis for
- 10 prosecution under this section.

11 **Sec. 2.** RCW 46.20.342 and 2010 c 269 s 7 and 2010 c 252 s 4 are  
12 each reenacted and amended to read as follows:

13 (1) It is unlawful for any person to drive a motor vehicle in this  
14 state while that person is in a suspended or revoked status or when his  
15 or her privilege to drive is suspended or revoked in this or any other  
16 state. Any person who has a valid Washington driver's license is not  
17 guilty of a violation of this section.

18 (a) A person found to be (~~an~~) a habitual offender under chapter  
19 46.65 RCW, who violates this section while an order of revocation  
20 issued under chapter 46.65 RCW prohibiting such operation is in effect,  
21 is guilty of driving while license suspended or revoked in the first  
22 degree, a gross misdemeanor. Upon the first such conviction, the  
23 person shall be punished by imprisonment for not less than ten days.  
24 Upon the second conviction, the person shall be punished by  
25 imprisonment for not less than ninety days. Upon the third or  
26 subsequent conviction, the person shall be punished by imprisonment for  
27 not less than one hundred eighty days. If the person is also convicted  
28 of the offense defined in RCW 46.61.502 or 46.61.504, when both  
29 convictions arise from the same event, the minimum sentence of  
30 confinement shall be not less than ninety days. The minimum sentence  
31 of confinement required shall not be suspended or deferred. A  
32 conviction under this subsection does not prevent a person from  
33 petitioning for reinstatement as provided by RCW 46.65.080.

34 (b) A person who violates this section while an order of suspension  
35 or revocation prohibiting such operation is in effect and while the  
36 person is not eligible to reinstate his or her driver's license or  
37 driving privilege, other than for a suspension for the reasons

1 described in (c) of this subsection, is guilty of driving while license  
2 suspended or revoked in the second degree, a gross misdemeanor. For  
3 the purposes of this subsection, a person is not considered to be  
4 eligible to reinstate his or her driver's license or driving privilege  
5 if the person is eligible to obtain an ignition interlock driver's  
6 license but did not obtain such a license. This subsection applies  
7 when a person's driver's license or driving privilege has been  
8 suspended or revoked by reason of:

9 (i) A conviction of a felony in the commission of which a motor  
10 vehicle was used;

11 (ii) A previous conviction under this section;

12 (iii) A notice received by the department from a court or diversion  
13 unit as provided by RCW 46.20.265, relating to a minor who has  
14 committed, or who has entered a diversion unit concerning an offense  
15 relating to alcohol, legend drugs, controlled substances, or imitation  
16 controlled substances;

17 (iv) A conviction of RCW 46.20.410, relating to the violation of  
18 restrictions of an occupational driver's license, a temporary  
19 restricted driver's license, or an ignition interlock driver's license;

20 (v) A conviction of RCW 46.20.345, relating to the operation of a  
21 motor vehicle with a suspended or revoked license;

22 (vi) A conviction of RCW 46.52.020, relating to duty in case of  
23 injury to or death of a person or damage to an attended vehicle;

24 (vii) A conviction of RCW 46.61.024, relating to attempting to  
25 elude pursuing police vehicles;

26 (viii) A conviction of RCW 46.61.212(4), relating to reckless  
27 endangerment of emergency zone workers;

28 (ix) A conviction of RCW 46.61.500, relating to reckless driving;

29 (x) A conviction of RCW 46.61.502 or 46.61.504, relating to a  
30 person under the influence of intoxicating liquor or drugs;

31 (xi) A conviction of RCW 46.61.520, relating to vehicular homicide;

32 (xii) A conviction of RCW 46.61.522, relating to vehicular assault;

33 (xiii) A conviction of RCW 46.61.527(4), relating to reckless  
34 endangerment of roadway workers;

35 (xiv) A conviction of RCW 46.61.530, relating to racing of vehicles  
36 on highways;

37 (xv) A conviction of RCW 46.61.685, relating to leaving children in  
38 an unattended vehicle with motor running;

1 (xvi) A conviction of RCW 46.61.740, relating to theft of motor  
2 vehicle fuel;

3 (xvii) A conviction of RCW 46.64.048, relating to attempting,  
4 aiding, abetting, coercing, and committing crimes;

5 (xviii) An administrative action taken by the department under  
6 chapter 46.20 RCW; (~~or~~)

7 (xix) A conviction of a local law, ordinance, regulation, or  
8 resolution of a political subdivision of this state, the federal  
9 government, or any other state, of an offense substantially similar to  
10 a violation included in this subsection; or

11 (xx) A finding that a person has committed a traffic infraction  
12 under section 1 of this act and suspension of driving privileges  
13 pursuant to section 1 (4)(b), (5)(b), or (6)(b) of this act.

14 (c) A person who violates this section when his or her driver's  
15 license or driving privilege is, at the time of the violation,  
16 suspended or revoked solely because (i) the person must furnish proof  
17 of satisfactory progress in a required alcoholism or drug treatment  
18 program, (ii) the person must furnish proof of financial responsibility  
19 for the future as provided by chapter 46.29 RCW, (iii) the person has  
20 failed to comply with the provisions of chapter 46.29 RCW relating to  
21 uninsured accidents, (iv) the person has failed to respond to a notice  
22 of traffic infraction, failed to appear at a requested hearing,  
23 violated a written promise to appear in court, or has failed to comply  
24 with the terms of a notice of traffic infraction or citation, as  
25 provided in RCW 46.20.289, (v) the person has committed an offense in  
26 another state that, if committed in this state, would not be grounds  
27 for the suspension or revocation of the person's driver's license, (vi)  
28 the person has been suspended or revoked by reason of one or more of  
29 the items listed in (b) of this subsection, but was eligible to  
30 reinstate his or her driver's license or driving privilege at the time  
31 of the violation, or (vii) the person has received traffic citations or  
32 notices of traffic infraction that have resulted in a suspension under  
33 RCW 46.20.267 relating to intermediate drivers' licenses, or any  
34 combination of (c)(i) through (vii) of this subsection, is guilty of  
35 driving while license suspended or revoked in the third degree, a  
36 misdemeanor. For the purposes of this subsection, a person is not  
37 considered to be eligible to reinstate his or her driver's license or

1 driving privilege if the person is eligible to obtain an ignition  
2 interlock driver's license but did not obtain such a license.

3 (2) Upon receiving a record of conviction of any person or upon  
4 receiving an order by any juvenile court or any duly authorized court  
5 officer of the conviction of any juvenile under this section, the  
6 department shall:

7 (a) For a conviction of driving while suspended or revoked in the  
8 first degree, as provided by subsection (1)(a) of this section, extend  
9 the period of administrative revocation imposed under chapter 46.65 RCW  
10 for an additional period of one year from and after the date the person  
11 would otherwise have been entitled to apply for a new license or have  
12 his or her driving privilege restored; or

13 (b) For a conviction of driving while suspended or revoked in the  
14 second degree, as provided by subsection (1)(b) of this section, not  
15 issue a new license or restore the driving privilege for an additional  
16 period of one year from and after the date the person would otherwise  
17 have been entitled to apply for a new license or have his or her  
18 driving privilege restored; or

19 (c) Not extend the period of suspension or revocation if the  
20 conviction was under subsection (1)(c) of this section. If the  
21 conviction was under subsection (1)(a) or (b) of this section and the  
22 court recommends against the extension and the convicted person has  
23 obtained a valid driver's license, the period of suspension or  
24 revocation shall not be extended.

25 NEW SECTION. **Sec. 3.** This act applies to infractions committed on  
26 or after the effective date of this section.

27 NEW SECTION. **Sec. 4.** This act takes effect July 1, 2012.

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