

A state trapping license allows the holder to trap fur-bearing animals throughout the state; however, a trapper may not place traps on private property without permission of the owner, lessee, or tenant where the land is improved and apparently used, or where the land is fenced or enclosed in a manner designed to exclude intruders or to indicate a property boundary line, or where notice is given by posting in a conspicuous manner. A state trapping license is void on April 1st following the date of issuance. The fee for this license is thirty dollars for residents sixteen years of age or older, twelve dollars for residents under sixteen years of age, and one hundred fifty dollars for nonresidents.

NEW SECTION. Sec. 4. A new section is added to chapter 77.32 RCW to read as follows:

The commission may revoke the trapper's license of a person placing unauthorized traps on private property and may remove those traps.

Passed the House April 26, 1987.

Passed the Senate April 26, 1987.

Approved by the Governor May 14, 1987.

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CHAPTER 373

[House Bill No. 1049]

DRIVING WHILE INTOXICATED—BLOOD ALCOHOL CONTENT

AN ACT Relating to blood alcohol content; amending RCW 46.61.502, 46.61.504, 46.61.506, 46.61.517, 88.02.095, and 9.41.098; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds the existing statutes that establish the criteria for determining when a person is guilty of driving a motor vehicle under the influence of intoxicating liquor or drugs are constitutional and do not require any additional criteria to ensure their legality. The purpose of this act is to provide an additional method of defining the crime of driving while intoxicated. This act is not an acknowledgement that the existing breath alcohol standard is legally improper or invalid.

Sec. 2. Section 1, chapter 176, Laws of 1979 ex. sess. as amended by section 2, chapter 153, Laws of 1986 and RCW 46.61.502 are each amended to read as follows:

A person is guilty of driving while under the influence of intoxicating liquor or any drug if ~~((he))~~ the person drives a vehicle within this state while:

(1) ~~((He))~~ The person has 0.10 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of ~~((his))~~ the person's breath(~~(, blood, or other bodily substance))~~) made under RCW 46.61.506 (~~(as now or hereafter amended)~~); or

(2) ~~((He))~~ The person has 0.10 percent or more by weight of alcohol in the person's blood as shown by analysis of the person's blood made under RCW 46.61.506; or

(3) The person is under the influence of or affected by intoxicating liquor or any drug; or

~~(((3)-He))~~ (4) The person is under the combined influence of or affected by intoxicating liquor and any drug.

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

Sec. 3. Section 2, chapter 176, Laws of 1979 ex. sess. as amended by section 3, chapter 153, Laws of 1986 and RCW 46.61.504 are each amended to read as follows:

A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if ~~((he))~~ the person has actual physical control of a vehicle within this state while:

(1) ~~((He))~~ The person has 0.10 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of ~~((his))~~ the person's breath(~~(, blood, or other bodily substance))~~ made under RCW 46.61.506(~~(; as now or hereafter amended))~~); or

(2) ~~((He))~~ The person has 0.10 percent or more by weight of alcohol in the person's blood as shown by analysis of the person's blood made under RCW 46.61.506; or

(3) The person is under the influence of or affected by intoxicating liquor or any drug; or

~~(((3)-He))~~ (4) The person is under the combined influence of or affected by intoxicating liquor and any drug.

The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section. No person may be convicted under this section if, prior to being pursued by a law enforcement officer, ~~((he))~~ the person has moved the vehicle safely off the roadway.

Sec. 4. Section 3, chapter 1, Laws of 1969 as last amended by section 4, chapter 153, Laws of 1986 and RCW 46.61.506 are each amended to read as follows:

(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the amount of alcohol in the person's blood or breath at the time alleged as shown by analysis of his blood(~~(;))~~ or breath(~~(, or other bodily substance))~~) is less than 0.10 percent by weight of alcohol in his blood or 0.10 grams of alcohol per two hundred ten liters of the person's breath, it is evidence that may be considered with other competent evidence

in determining whether the person was under the influence of intoxicating liquor or any drug.

(2) The breath analysis shall be based upon grams of alcohol per two hundred ten liters of breath. The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

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

(4) When a blood test is administered under the provisions of RCW 46.20.308, the withdrawal of blood for the purpose of determining its alcoholic content may be performed only by a physician, a registered nurse, or a qualified technician. This limitation shall not apply to the taking of breath specimens.

(5) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

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

Sec. 5. Section 27, chapter 165, Laws of 1983 as last amended by section 2, chapter 64, Laws of 1986 and RCW 46.61.517 are each amended to read as follows:

The refusal of a person to submit to a test of the alcoholic content of ((his)) the person's blood or breath under RCW 46.20.308 is admissible into evidence at a subsequent criminal trial.

Sec. 6. Section 2, chapter 267, Laws of 1985 as amended by section 6, chapter 153, Laws of 1986 and RCW 88.02.095 are each amended to read as follows:

(1) It shall be unlawful for any person to operate a vessel in a negligent manner, except a commercial vessel which has or is required to have a valid marine document as a vessel of the United States and is operating in the navigable waters of the United States. For the purpose of this section, to "operate in a negligent manner" shall be construed to mean the operation of

a vessel in such manner as to endanger or be likely to endanger any persons or property.

(2) A person is guilty of operating a vessel while under the influence of intoxicating liquor or any drug if the person operates a vessel within this state while:

(a) The person has 0.10 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of the person's breath(~~((, blood, or other bodily substance))~~) made under RCW 46.61.506; or

(b) The person has 0.10 percent or more by weight of alcohol in the person's blood, as shown by analysis of the person's blood made under RCW 46.61.506 ; or

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

~~((c))~~ (d) The person is under the combined influence of or affected by intoxicating liquor and any drug.

The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section. A person cited under this subsection may upon request be given a breath test for ~~((blood))~~ breath alcohol or may request to have a blood sample taken for blood alcohol analysis. An arresting officer shall administer field sobriety tests when circumstances permit.

(3) For the purposes of this section, "vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(4) For the purpose of this section, "vessel operator" means a person who is in actual physical control of a vessel.

(5) A violation of this section is a misdemeanor, punishable by up to ninety days in jail and by a fine of not more than one thousand dollars. In addition, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense.

Sec. 7. Section 6, chapter 232, Laws of 1983 as amended by section 1, chapter 153, Laws of 1986 and RCW 9.41.098 are each amended to read as follows:

(1) The superior courts and the courts of limited jurisdiction of the state may order forfeiture of a firearm which is proven to be:

(a) Found concealed on a person not authorized by RCW 9.41.060 or 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute defense to forfeiture if the person possessed a valid Washington concealed pistol license within the preceding two years and has not become ineligible for a concealed pistol license in the interim. Before the firearm may be returned, the person must pay the past due renewal fee and the current renewal fee;

(b) Commercially sold to any person without an application as required by RCW 9.41.090;

(c) Found in the possession or under the control of a person at the time the person committed or was arrested for committing a crime of violence or a crime in which a firearm was used or displayed or a felony violation of the uniform controlled substances act, chapter 69.50 RCW;

(d) Found concealed on a person who is in any place in which a concealed pistol license is required, and who is under the influence of any drug or under the influence of intoxicating liquor, having 0.10 grams or more of alcohol per two hundred ten liters of breath or 0.10 percent or more by weight of alcohol in the person's blood, as shown by analysis of ((his)) the person's breath, blood, or other bodily substance;

(e) Found in the possession of a person prohibited from possessing the firearm under RCW 9.41.040;

(f) Found in the possession of a person free on bail or personal recognizance pending trial, appeal, or sentencing for a crime of violence or a crime in which a firearm was used or displayed, except that violations of Title 77 RCW shall not result in forfeiture under this section;

(g) Found in the possession of a person found to have been mentally incompetent while in possession of a firearm when apprehended or who is thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

(h) Known to have been used or displayed by a person in the violation of a proper written order of a court of general jurisdiction; or

(i) Known to have been used in the commission of a crime of violence or a crime in which a firearm was used or displayed or a felony violation of the uniformed controlled substances act, chapter 69.50 RCW.

(2) Upon order of forfeiture, the court in its discretion shall order destruction of any firearm that is illegal for any person to possess, retention of the firearm as evidence, appropriate use by a law enforcement agency in the state, donation to a historical museum, or sale at a public auction to a commercial seller. The proceeds from any sale shall be divided as follows: The local jurisdiction shall retain its costs, including actual costs of storage and sale, and shall forward the remainder to the state game commission for use in its firearms training program pursuant to RCW 77.32.155. If the court orders delivery to a law enforcement agency and the agency no longer requires use of the firearm, the agency shall dispose of the firearm in a manner which is consistent with this subsection.

(3) The court shall order the firearm returned to the owner upon a showing that there is no probable cause to believe a violation of subsection (1) of this section existed or the firearm was stolen from the owner or the owner neither had knowledge of nor consented to the act or omission involving the firearm which resulted in its forfeiture.

(4) A law enforcement officer of the state or of any county or municipality may confiscate a firearm found to be in the possession of a person under circumstances specified in subsection (1) of this section. After confiscation, the firearm shall not be surrendered except: (a) To the prosecuting

attorney for use in subsequent legal proceedings; (b) for disposition according to an order of a court having jurisdiction as provided in subsection (1) of this section; or (c) to the owner if the proceedings are dismissed or as directed in subsection (3) of this section.

NEW SECTION. Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 24, 1987.

Passed the Senate April 23, 1987.

Approved by the Governor May 14, 1987.

Filed in Office of Secretary of State May 14, 1987.

CHAPTER 374

[Substitute House Bill No. 928]

CLAMS—SUBTIDAL HARVESTING LEASES NEAR RESIDENTIAL ZONES

AN ACT Relating to the commercial harvesting of subtidal hardshell clams; amending RCW 79.96.030; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 136, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.96.030 are each amended to read as follows:

(1) The department of natural resources, upon the receipt of an application for a lease for the purpose of planting and cultivating oyster beds or for the purpose of cultivating clams or other edible shellfish, shall notify the director of fisheries of the filing of the application describing the tidelands or beds of navigable waters applied for. The director of fisheries shall cause an inspection of the lands applied for to be made and shall make a full report to the department of natural resources of his findings as to whether it is necessary, in order to protect existing natural oyster beds, and to secure adequate seeding thereof, to retain the lands described in the application for lease or any part thereof, and in the event the director deems it advisable to retain the lands or any part thereof for the protection of existing natural oyster beds or to guarantee the continuance of an adequate seed stock for existing natural oyster beds, the same shall not be subject to lease. However, if the director determines that the lands applied for or any part thereof may be leased, he shall so notify the department of natural resources and the director shall cause an examination of the lands to be made to determine the presence, if any, of natural oysters, clams, or other edible shellfish on said lands, and to fix the rental value of the lands for use for oyster, clam, or other edible shellfish cultivation. In his report to the department, the director shall recommend a minimum rental for said lands and an estimation of the value of the oysters, clams, or other edible shellfish, if any,