

## FAQs: Proposed 0.05 BAC Limit for DUI (SB 5067)

### **Liability:** Will the BAC limit change impact Washington server liability?

**A: No.** The Washington Supreme Court and Court of Appeals have been very clear in multiple opinions across multiple decades. The Supreme Court of Washington, En Banc, wrote in *Barrett v. Lucky Seven Saloon Inc* (2004): “both this court and the Court of Appeals have consistently reiterated **liability attaches only when service is to an ‘obviously intoxicated’ person.**”<sup>i</sup> The legal standard for server liability is independent from the per se limit for driving. Section 12 of SB 5067 maintains current legal standards for server liability.

### **Training:** Aren’t servers trained to recognize when someone is at 0.08 but not 0.05?

**A: No.** RCW 66.44.200(1) prohibits the sale of alcohol to “any person apparently under the influence of liquor.” Licensed servers are trained to recognize the visible signs of intoxication, which are not the same as a person’s BAC level. The standard training describes these signs: slurred speech; dropping or fumbling with items; swaying or staggering while walking; spilling drinks; inability to focus; bumping into people, becoming overly friendly, loud or aggressive; or relaxed inhibitions.<sup>ii</sup>

### **Arrests:** If we lower the BAC, won’t more people be arrested? Maybe even people who aren’t impaired?

**A: No and No.** Whether or not a person is stopped initially on a suspicion of DUI or for another infraction, law enforcement must determine probable cause that the person is operating a motor vehicle under the influence of drugs or alcohol.

*Research-based signs of impairment while driving:* Problems in maintaining proper lane position; Speed and braking problems; Vigilance problems; and/or Judgment problems.

*Indications of impairment after the stop:* Bloodshot eyes, soiled clothing, fumbling, alcohol containers, drugs or drug paraphernalia, bruises, scratches, unusual actions, slurred speech, admission of drinking, inconsistent responses, unusual statements, abusive language, smell of alcoholic beverages, cannabis, odors intended to cover up those smells<sup>iii</sup>

Based upon these initial signs, the officer who suspects impairment would conduct a (voluntary) standardized Field Sobriety Test (SFST): 1) Horizontal Gaze Nystagmus; 2) Walk and Turn; and 3) One leg stand.<sup>iv</sup>

Based upon the totality of evidence observed from the investigation, an officer would make an arrest decision. *If the decision is to arrest, only then do they conduct the preliminary breath test to determine the driver’s BAC level.*

Utah did not see arrests increase after adopting the 0.05 BAC *per se* limit.<sup>v</sup>

## One state: Isn't Utah the only place with a 0.05 limit?

**A: No.** Approximately 75% of countries, home to more than 6 billion people, have established BAC limits of 0.05 or lower, beginning in 1936. North America is an outlier with 0.08 BAC limits. Washington is missing out on the benefits of 0.05, which include prevention and deterrence.

## Effectiveness: Didn't Utah see improvements for only one year?

**A: No.** The 0.05 BAC law went into effect 14.5 months prior to the COVID pandemic. In 2019, Utah saw a 19% decrease in traffic fatalities. Virtually all states saw significant increases in impaired driving and fatal crashes during the pandemic. Utah was no exception. By 2023, however, Utah's fatalities declined again.

*In 2023, Washington's rate of alcohol-impaired driving fatalities was **three times the rate of Utah's**. (Based upon fatalities per 100M miles travelled and fatalities involving drivers with a BAC of 0.05 or higher)<sup>vi</sup>*

*0.05 BAC laws have reduced fatalities an average of 11% across many countries and decades.<sup>vii</sup>*

## Hospitality: Won't the industry suffer?

**A: No.** No studies we've reviewed have shown that alcohol sales decreased after 0.05 laws are adopted, including in Utah. In Washington, the same argument was made about the change from 0.10 to 0.08 in 1999.

What happened then? Gross liquor sales increased 51% between 1996-2024. Non-retail licensees (producers and distributors) increased 49% in the five years after Washington adopted 0.08. Retail licenses (bars, restaurants and grocery stores) increased 8.3% overall.<sup>viii</sup>

## Small problem: Isn't the real problem other drugs, not alcohol?

**A: No.** 268 people died in crashes involving drivers with BAC levels between 0.01 and 0.079 (2014-2023). Another 203 people died in crashes involving drivers just above the current limit (0.08-0.119).

Overall, 31% of all Washington traffic fatalities involved *drivers impaired by alcohol*, representing 65% in impairment-related fatalities since 1994.

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<sup>i</sup> BARRETT v. LUCKY SEVEN SALOON INC (2004). See also FAUST v. 10 ABC 10 (2009), and WALLACE v. PECK (2021)

<sup>ii</sup> Washington Liquor and Cannabis Board (LCB)

<sup>iii</sup> NHTSA (2010). [The Visual Detection of DUI Motorists](#)

<sup>iv</sup> NHTSA (2023). DWI Detection and Standardized Field Sobriety Testing.

<sup>v</sup> Utah Department of Public Safety (2025). Report on Utah's 0.05 BAC Law.

<sup>vi</sup> Utah Department of Public Safety (2025). Report on Utah's 0.05 BAC Law. And Washington Traffic Safety Commission's Fatality Analysis Reporting System (FARS) 2023 final fatality data.

<sup>vii</sup> Fell and Scherer (2017). Estimation of the Potential Effectiveness of Lowering the Blood Alcohol Concentration (BAC) Limit for Driving from .08 to .05 grams per deciliter in the United States

<sup>viii</sup> Washington Liquor Control Board Annual Report, 2004.