

SENATE BILL REPORT

ESSB 5431

As Passed Senate, February 13, 2004

Title: An act relating to positive drug or alcohol test results of commercial motor vehicle operators.

Brief Description: Updating laws on drugs and alcohol use by commercial drivers.

Sponsors: Senate Committee on Highways & Transportation (originally sponsored by Senators Oke, Prentice, Horn, Haugen and Rasmussen; by request of Department of Licensing).

Brief History:

Committee Activity: Highways & Transportation: 2/12/03, 3/5/03 [DP]; 1/28/04 [DPS].
Passed Senate: 3/18/03, 48-0; 2/13/04, 39-9.

SENATE COMMITTEE ON HIGHWAYS & TRANSPORTATION

Majority Report: That Substitute Senate Bill No. 5431 be substituted therefor, and the substitute bill do pass.

Signed by Senators Horn, Chair; Swecker, Vice Chair; Esser, Haugen, Jacobsen, Kastama, Mulliken, Murray, Oke and Spanel.

Staff: Kimberly Johnson (786-7346)

Background: Commercial motor carriers are required by federal law to implement a drug and alcohol testing program for their drivers. Under current state law, all medical review officers (MRO) and breath alcohol technicians (BAT) under contract with a motor carrier to conduct drug or alcohol testing must report positive test results for a commercial driver directly to the Department of Licensing (DOL). A driver who wishes to challenge the positive test result is entitled to a hearing.

DOL disqualifies commercial drivers who fail a drug or alcohol test. The employer of a driver who has refused to submit to a test may notify law enforcement, the MRO, or the BAT. A disqualification remains in effect until the driver presents evidence of satisfactory participation in, or completion of, a drug or alcohol program certified by the Department of Social and Health Services. DOL reinstates the commercial driver's license once it receives a drug and alcohol assessment and evidence of satisfactory participation in, or completion of, any required drug or alcohol treatment program.

Summary of Bill: "Positive alcohol confirmation test," "substance abuse professional" and "verified positive drug test" are defined.

A refusal to take a drug or alcohol test that meets the standard for refusal under federal law is considered equivalent to a report of a verified positive drug test or a positive alcohol confirmation test, respectively.

A motor carrier, employer, or consortium that is required to have a testing program must report a refusal by a commercial motor vehicle driver to take a drug or alcohol test to DOL, when the refusal has not been reported by an MRO or BAT.

An MRO or BAT under contract with an employer involved in transit operations may only report a positive alcohol or drug test for transit drivers to DOL when the positive test is a pre-employment screening test. A transit employer must report a positive test to DOL only after the driver's employment has been terminated and any grievance procedures have been concluded.

For purposes of a hearing, a copy of a positive test result with a declaration by the tester, MRO, or BAT that states the accuracy of the laboratory protocols used to arrive at the test result is prima facie evidence of: (1) the positive test result; (2) that the motor carrier, employer, or consortium has a program subject to federal requirements; and (3) that the MRO or BAT making the report accurately followed the protocols for testing established to verify or confirm the results.

A disqualification remains in effect until the person both undergoes a drug and alcohol assessment by a substance abuse professional (SAP) who meets federal requirements and offers proof of satisfactory participation in or completion of a drug or alcohol program as recommended by the SAP.

The SAP must forward a diagnostic evaluation and treatment recommendation to DOL for use in determining the person's eligibility for driving a commercial motor vehicle.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This is intended to address issues that have come up since the passage of SB 6461. This bill allows DOL to treat all CDL holders equally and removes unintended references to DSHS certified agencies. Trucking employers are worried about drivers that do not offer accurate past employment information so that a future employer can request the necessary disclosure of past positive drug and alcohol test results. Transit drivers that lose their transit job can now apply for a job with a trucking company and if the driver lies about his/her employment history, the trucking company has no idea that the driver may have a problem.

Testimony Against: The system that we are operating under now works just fine for transit drivers. Transit drivers are supervised more than truck drivers and, therefore, there are already protections in place to catch persons who should not be driving. The effect of this bill would be to put a driver out of work for at least six months which is a catastrophic effect for that driver. Under our collective bargaining agreements, if our license is suspended we will be terminated, which is contrary to the intent of the federal regulations. The intent is that persons should receive treatment and get back to work. If a driver tests positive twice, the driver is terminated. DOL does not need to be inserted in this process; it only adds additional bureaucratic red tape.

Testified: Jim Fitzgerald, ATU Leg. Council (con); Judy Groezinger, DOL (pro); Dee Wakenight, ATU Local 587 (con); Larry Pursley, WA Trucking Assn. (pro); Peter Altmann, ATU #758 (con); Cathy Holland, ATU 843 (con).