

# SENATE BILL REPORT

## SB 5263

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As Reported By Senate Committee On:  
Transportation, February 21, 2005

**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:** Senators Haugen, Swecker, Oke and Mulliken; by request of Department of Licensing.

**Brief History:**

**Committee Activity:** Transportation: 1/31/05, 2/21/05 [DPS].

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### SENATE COMMITTEE ON TRANSPORTATION

**Majority Report:** That Substitute Senate Bill No. 5263 be substituted therefor, and the substitute bill do pass.

Signed by Senators Haugen, Chair; Jacobsen, Vice Chair; Poulsen, Vice Chair; Swecker, Ranking Minority Member; Eide, Esser, Kastama, Mulliken, Oke, Spanel and Weinstein.

**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 Substitute 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: (1) the driver's employment has been terminated or the driver has resigned; (2) any grievance procedures, up to but not including arbitration, have been concluded; and (3) at the time of termination or resignation the driver has not be cleared to return to safety sensitive functions.

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.

**Substitute Bill Compared to Original Bill:** The substitute clarifies that an employer must report a verified positive drug test or positive alcohol confirmation test if: (1) the driver's employment has been terminated or the driver has resigned; (2) any grievance procedures, up to but not including arbitration, have been concluded; and (3) at the time of termination or resignation the driver has not be cleared to return to safety sensitive functions.

The emergency clause was removed.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Testimony For:** The current reporting system supports and supplements the Federal regulations that require drug and alcohol testing. In 2002, the Legislature took the opportunity to close a loophole in federal law. It was the original intent of the bill in 2002 to cover all commercial drivers licence holders in Washington and the failure to include transit drivers was only the result of a drafting error that referenced the wrong federal regulation.

This bill enhances public safety on our streets and public highways. Passage of this bill will help pupil transportation administrators deal with drivers who refuse to take a random drug or alcohol test.

The unintended consequence of language used in the original bill caused a dual treatment and certification system which is problematic and unnecessary burdensome on drivers who are trying to do the right thing. This bill fixes the language and will help those that are trying to seek treatment and get back on the road.

**Testimony Against:** Transit employers and employees follow the federal guidelines very strictly. The Amalgamated Transit Union (ATU) does not condone impaired driving. The ATU has concerns about its employees' privacy. A disqualification can have far reaching implications for drivers. We support DOL's attempt to correct the language concerning Substance Abuse Professionals. We also support preemployment positive tests being reported to DOL, but cannot support DOL disqualifying the commercial driver's license. Federal law only requires a disqualification upon conviction of an offense. The disqualification at the state level is overkill.

**Who Testified:** PRO: Clark Holloway, Department of Licensing; Norm Miller, Washington Trucking Association; Allan Jones, Office of the Superintendent of Public Instruction; Pam Beltz, Health Force Partners.

CON: Jim Fitzgerald, Amalgamated Transit Union.