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SENATE BILL 5263

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State of Washington

59th Legislature

2005 Regular Session

By Senators Haugen, Swecker, Oke and Mulliken; by request of Department of Licensing

Read first time 01/19/2005. Referred to Committee on Transportation.

1 AN ACT Relating to positive drug or alcohol test results of  
2 commercial motor vehicle operators; amending RCW 46.25.010, 46.25.123,  
3 46.25.125, and 46.25.090; creating a new section; providing an  
4 effective date; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
7 promote the safety of drivers and passengers on Washington roads and  
8 public transportation systems. To this end, Washington has established  
9 a reporting requirement for employers of commercial drivers who test  
10 positive for unlawful substances. The legislature recognizes that  
11 transit operators and their employers are an asset to the public  
12 transportation system and continuously strive to provide a safe and  
13 efficient mode of travel. In light of this, the legislature further  
14 intends that the inclusion of transit employers in the reporting  
15 requirements serve only to enhance the current efforts of these  
16 dedicated employers and employees as they continue to provide a safe  
17 public transportation system to the citizens of Washington.

1       **Sec. 2.** RCW 46.25.010 and 2004 c 187 s 2 are each amended to read  
2 as follows:

3       The definitions set forth in this section apply throughout this  
4 chapter.

5       (1) "Alcohol" means any substance containing any form of alcohol,  
6 including but not limited to ethanol, methanol, propanol, and  
7 isopropanol.

8       (2) "Alcohol concentration" means:

9       (a) The number of grams of alcohol per one hundred milliliters of  
10 blood; or

11       (b) The number of grams of alcohol per two hundred ten liters of  
12 breath.

13       (3) "Commercial driver's license" (CDL) means a license issued in  
14 accordance with the requirements of this chapter to an individual that  
15 authorizes the individual to drive a class of commercial motor vehicle.

16       (4) The "commercial driver's license information system" (CDLIS) is  
17 the information system established pursuant to the CMVSA to serve as a  
18 clearinghouse for locating information related to the licensing and  
19 identification of commercial motor vehicle drivers.

20       (5) "Commercial driver's instruction permit" means a permit issued  
21 under RCW 46.25.060(5).

22       (6) "Commercial motor vehicle" means a motor vehicle designed or  
23 used to transport passengers or property:

24       (a) If the vehicle has a gross vehicle weight rating of 26,001 or  
25 more pounds;

26       (b) If the vehicle is designed to transport sixteen or more  
27 passengers, including the driver;

28       (c) If the vehicle is transporting hazardous materials as defined  
29 in this section; or

30       (d) If the vehicle is a school bus regardless of weight or size.

31       (7) "Conviction" has the definition set forth in RCW 46.20.270.

32       (8) "Disqualification" means a prohibition against driving a  
33 commercial motor vehicle.

34       (9) "Drive" means to drive, operate, or be in physical control of  
35 a motor vehicle in any place open to the general public for purposes of  
36 vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and  
37 46.25.120, "drive" includes operation or physical control of a motor  
38 vehicle anywhere in the state.

1 (10) "Drugs" are those substances as defined by RCW 69.04.009,  
2 including, but not limited to, those substances defined by 49 C.F.R.  
3 40.3.

4 (11) "Employer" means any person, including the United States, a  
5 state, or a political subdivision of a state, who owns or leases a  
6 commercial motor vehicle, or assigns a person to drive a commercial  
7 motor vehicle.

8 (12) "Gross vehicle weight rating" (GVWR) means the value specified  
9 by the manufacturer as the maximum loaded weight of a single or a  
10 combination or articulated vehicle, or the registered gross weight,  
11 where this value cannot be determined. The GVWR of a combination or  
12 articulated vehicle, commonly referred to as the "gross combined weight  
13 rating" or GCWR, is the GVWR of the power unit plus the GVWR of the  
14 towed unit or units.

15 (13) "Hazardous materials" means any material that has been  
16 designated as hazardous under 49 U.S.C. Sec. 5103 and is required to be  
17 placarded under subpart F of 49 C.F.R. part 172 or any quantity of a  
18 material listed as a select agent or toxin in 42 C.F.R. part 73.

19 (14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or  
20 semitrailer propelled or drawn by mechanical power used on highways, or  
21 any other vehicle required to be registered under the laws of this  
22 state, but does not include a vehicle, machine, tractor, trailer, or  
23 semitrailer operated exclusively on a rail.

24 (15) "Out-of-service order" means a temporary prohibition against  
25 driving a commercial motor vehicle.

26 (16) "Positive alcohol confirmation test" means an alcohol  
27 confirmation test that:

28 (a) Has been conducted by a breath alcohol technician under 49  
29 C.F.R. 40; and

30 (b) Indicates an alcohol concentration of 0.04 or more.

31 A report that a person has refused an alcohol test, under  
32 circumstances that constitute the refusal of an alcohol test under 49  
33 C.F.R. 40, will be considered equivalent to a report of a positive  
34 alcohol confirmation test for the purposes of this chapter.

35 (17) "School bus" means a commercial motor vehicle used to  
36 transport preprimary, primary, or secondary school students from home  
37 to school, from school to home, or to and from school-sponsored events.  
38 School bus does not include a bus used as a common carrier.

1        ~~((+17+))~~ (18) "Serious traffic violation" means:

2        (a) Excessive speeding, defined as fifteen miles per hour or more  
3 in excess of the posted limit;

4        (b) Reckless driving, as defined under state or local law;

5        (c) A violation of a state or local law relating to motor vehicle  
6 traffic control, other than a parking violation, arising in connection  
7 with an accident or collision resulting in death to any person;

8        (d) Driving a commercial motor vehicle without obtaining a  
9 commercial driver's license;

10       (e) Driving a commercial motor vehicle without a commercial  
11 driver's license in the driver's possession; however, any individual  
12 who provides proof to the court by the date the individual must appear  
13 in court or pay any fine for such a violation, that the individual held  
14 a valid CDL on the date the citation was issued, is not guilty of a  
15 "serious traffic offense";

16       (f) Driving a commercial motor vehicle without the proper class of  
17 commercial driver's license endorsement or endorsements for the  
18 specific vehicle group being operated or for the passenger or type of  
19 cargo being transported; and

20       (g) Any other violation of a state or local law relating to motor  
21 vehicle traffic control, other than a parking violation, that the  
22 department determines by rule to be serious.

23       ~~((+18+))~~ (19) "State" means a state of the United States and the  
24 District of Columbia.

25       ~~((+19+))~~ (20) "Substance abuse professional" means an alcohol and  
26 drug specialist meeting the credentials, knowledge, training, and  
27 continuing education requirements of 49 C.F.R. 40.281.

28       (21) "Tank vehicle" means a vehicle that is designed to transport  
29 a liquid or gaseous material within a tank that is either permanently  
30 or temporarily attached to the vehicle or the chassis. Tank vehicles  
31 include, but are not limited to cargo tanks and portable tanks.  
32 However, this definition does not include portable tanks having a rated  
33 capacity under one thousand gallons.

34       ~~((+20+))~~ (22) "United States" means the fifty states and the  
35 District of Columbia.

36       (23) "Verified positive drug test" means a drug test result or  
37 validity testing result from a laboratory certified under the authority  
38 of the federal department of health and human services that:

1 (a) Indicates a drug concentration at or above the cutoff  
2 concentration established under 49 C.F.R. 40.87; and

3 (b) Has undergone review and final determination by a medical  
4 review officer.

5 A report that a person has refused a drug test, under circumstances  
6 that constitute the refusal of a federal department of transportation  
7 drug test under 49 C.F.R. 40, will be considered equivalent to a report  
8 of a verified positive drug test for the purposes of this chapter.

9 **Sec. 3.** RCW 46.25.123 and 2002 c 272 s 1 are each amended to read  
10 as follows:

11 (1) All medical review officers or breath alcohol technicians hired  
12 by or under contract to a motor carrier or employer who employs drivers  
13 who operate commercial motor vehicles and who is required to have a  
14 testing program conducted under the procedures established by 49 C.F.R.  
15 ((382)) 40 or to a consortium the carrier or employer belongs to, as  
16 defined in 49 C.F.R. ((382.17)) 40.3, shall report the finding of a  
17 commercial motor vehicle driver's ((confirmed)) verified positive drug  
18 test or positive alcohol confirmation test to the department of  
19 licensing on a form provided by the department. If the employer is  
20 required to have a testing program under 49 C.F.R. 655, a report of a  
21 verified positive drug test or positive alcohol confirmation test must  
22 not be forwarded to the department under this subsection unless the  
23 test is a pre-employment drug test conducted under 49 C.F.R. 655.41 or  
24 a pre-employment alcohol test conducted under 49 C.F.R. 655.42.

25 (2)(a) A motor carrier or employer who employs drivers who operate  
26 commercial motor vehicles and who is required to have a testing program  
27 conducted under the procedures established by 49 C.F.R. 40, or the  
28 consortium the carrier or employer belongs to, must report a refusal by  
29 a commercial motor vehicle driver to take a drug or alcohol test, under  
30 circumstances that constitute the refusal of a test under 49 C.F.R. 40  
31 and where such refusal has not been reported by a medical review  
32 officer or breath alcohol technician, to the department of licensing on  
33 a form provided by the department.

34 (b) An employer who is required to have a testing program under 49  
35 C.F.R. 655 must report a commercial motor vehicle driver's verified  
36 positive drug test or a positive alcohol confirmation test if the

1 driver's employment has been terminated and any grievance process that  
2 may have been invoked has been concluded.

3 (3) Motor carriers, employers, or consortiums shall make it a  
4 written condition of their contract or agreement with a medical review  
5 officer or breath alcohol technician, regardless of the state where the  
6 medical review officer or breath alcohol technician is located, that  
7 the medical review officer or breath alcohol technician is required to  
8 report all Washington state licensed drivers who have a ((~~confirmed~~))  
9 verified positive drug test or positive alcohol confirmation test to  
10 the department of licensing within three business days of the  
11 ((~~confirmed test~~)) verification or confirmation. Failure to obtain  
12 this contractual condition or agreement with the medical review officer  
13 or breath alcohol technician by the motor carrier, employer, or  
14 consortium, or failure to report a refusal as required by subsection  
15 (2) of this section, will result in an administrative fine as provided  
16 in RCW 46.32.100 or 81.04.405.

17 (4) Substances obtained for testing may not be used for any purpose  
18 other than drug or alcohol testing under 49 C.F.R. ((382)) 40.

19 **Sec. 4.** RCW 46.25.125 and 2002 c 272 s 2 are each amended to read  
20 as follows:

21 (1) When the department of licensing receives a report from a  
22 medical review officer ((~~or~~)), breath alcohol technician, employer,  
23 contractor, or consortium that ((~~the holder of a commercial driver's~~  
24 ~~license~~)) a driver has a ((~~confirmed~~)) verified positive drug test or  
25 positive alcohol confirmation test, ((~~either~~)) as part of the testing  
26 program ((~~required by~~)) conducted under 49 C.F.R. ((~~382 or as part of~~  
27 ~~a preemployment drug test~~)) 40, the department shall disqualify the  
28 driver from driving a commercial motor vehicle under RCW 46.25.090(7)  
29 subject to a hearing as provided in this section. The department shall  
30 notify the person in writing of the disqualification by first class  
31 mail. The notice must explain the procedure for the person to request  
32 a hearing.

33 (2) A person disqualified from driving a commercial motor vehicle  
34 for having a ((~~confirmed~~)) verified positive drug test or positive  
35 alcohol confirmation test may request a hearing to challenge the  
36 disqualification within twenty days from the date notice is given. If

1 the request for a hearing is mailed, it must be postmarked within  
2 twenty days after the department has given notice of the  
3 disqualification.

4 (3) The hearing must be conducted in the county of the person's  
5 residence, except that the department may conduct all or part of the  
6 hearing by telephone or other electronic means.

7 (4) For the purposes of this section, or for the purpose of a  
8 hearing de novo in an appeal to superior court, the hearing must be  
9 limited to the following issues: (a) Whether the driver is the person  
10 who (~~took the drug or alcohol test~~) is the subject of the report; (b)  
11 whether the motor carrier, employer, or consortium has a program that  
12 (~~meets~~) is subject to the federal requirements under 49 C.F.R.  
13 (~~382~~) 40; and (c) whether the medical review officer or breath  
14 alcohol technician making the report accurately followed the protocols  
15 (~~for testing~~) established to (~~certify~~) verify or confirm the  
16 results, or if the driver refused a test, whether the circumstances  
17 constitute the refusal of a test under 49 C.F.R. 40. Evidence may be  
18 presented to demonstrate that the test results are a false positive.  
19 For the purpose of a hearing under this section, a copy of (~~the~~) a  
20 positive test result with a declaration by the tester or medical review  
21 officer or breath alcohol technician stating the accuracy of the  
22 laboratory protocols followed to arrive at the test result is prima  
23 facie evidence:

24 (i) Of a (~~confirmed~~) verified positive drug test or positive  
25 alcohol confirmation test result;

26 (ii) That the motor carrier, employer, or consortium has a program  
27 that is subject to the federal requirements under 49 C.F.R. 40; and

28 (iii) That the medical review officer or breath alcohol technician  
29 making the report accurately followed the protocols for testing  
30 established to verify or confirm the results.

31 After the hearing, the department shall order the disqualification  
32 of the person either be rescinded or sustained.

33 (5) If the person does not request a hearing within the twenty-day  
34 time limit, or if the person fails to appear at a hearing, the person  
35 has waived the right to a hearing and the department shall sustain the  
36 disqualification.

37 (6) A decision by the department disqualifying a person from  
38 driving a commercial motor vehicle is stayed and does not take effect

1 while a formal hearing is pending under this section or during the  
2 pendency of a subsequent appeal to superior court so long as there is  
3 no conviction for a moving violation or no finding that the person has  
4 committed a traffic infraction that is a moving violation and the  
5 department receives no further report of a (~~confirmed~~) verified  
6 positive drug test or positive alcohol confirmation test during the  
7 pendency of the hearing and appeal. If the disqualification is  
8 sustained after the hearing, the person who is disqualified may file a  
9 petition in the superior court of the county of his or her residence to  
10 review the final order of disqualification by the department in the  
11 manner provided in RCW 46.20.334.

12 (7) The department of licensing may adopt rules specifying further  
13 requirements for requesting and conducting a hearing under this  
14 section.

15 (8) The department of licensing is not civilly liable for damage  
16 resulting from disqualifying a driver based on a (~~confirmed~~) verified  
17 positive drug test or positive alcohol confirmation test result as  
18 required by this section or for damage resulting from release of this  
19 information that occurs in the normal course of business.

20 **Sec. 5.** RCW 46.25.090 and 2004 c 187 s 7 are each amended to read  
21 as follows:

22 (1) A person is disqualified from driving a commercial motor  
23 vehicle for a period of not less than one year if a report has been  
24 received by the department pursuant to RCW 46.25.120, or if the person  
25 has been convicted of a first violation, within this or any other  
26 jurisdiction, of:

27 (a) Driving a motor vehicle under the influence of alcohol or any  
28 drug;

29 (b) Driving a commercial motor vehicle while the alcohol  
30 concentration in the person's system is 0.04 or more as determined by  
31 any testing methods approved by law in this state or any other state or  
32 jurisdiction;

33 (c) Leaving the scene of an accident involving a motor vehicle  
34 driven by the person;

35 (d) Using a motor vehicle in the commission of a felony;

36 (e) Refusing to submit to a test to determine the driver's alcohol  
37 concentration while driving a motor vehicle;



1 (f) Driving a commercial motor vehicle when, as a result of prior  
2 violations committed while operating a commercial motor vehicle, the  
3 driver's commercial driver's license is revoked, suspended, or  
4 canceled, or the driver is disqualified from operating a commercial  
5 motor vehicle;

6 (g) Causing a fatality through the negligent operation of a  
7 commercial motor vehicle, including but not limited to the crimes of  
8 vehicular homicide and negligent homicide.

9 If any of the violations set forth in this subsection occurred  
10 while transporting hazardous material, the person is disqualified for  
11 a period of not less than three years.

12 (2) A person is disqualified for life if it has been determined  
13 that the person has committed or has been convicted of two or more  
14 violations of any of the offenses specified in subsection (1) of this  
15 section, or any combination of those offenses, arising from two or more  
16 separate incidents.

17 (3) The department may adopt rules, in accordance with federal  
18 regulations, establishing guidelines, including conditions, under which  
19 a disqualification for life under subsection (2) of this section may be  
20 reduced to a period of not less than ten years.

21 (4) A person is disqualified from driving a commercial motor  
22 vehicle for life who uses a motor vehicle in the commission of a felony  
23 involving the manufacture, distribution, or dispensing of a controlled  
24 substance, as defined by chapter 69.50 RCW, or possession with intent  
25 to manufacture, distribute, or dispense a controlled substance, as  
26 defined by chapter 69.50 RCW.

27 (5) A person is disqualified from driving a commercial motor  
28 vehicle for a period of:

29 (a) Not less than sixty days if:

30 (i) Convicted of or found to have committed a second serious  
31 traffic violation while driving a commercial motor vehicle; or

32 (ii) Convicted of reckless driving, where there has been a prior  
33 serious traffic violation; or

34 (b) Not less than one hundred twenty days if:

35 (i) Convicted of or found to have committed a third or subsequent  
36 serious traffic violation while driving a commercial motor vehicle; or

37 (ii) Convicted of reckless driving, where there has been two or  
38 more prior serious traffic violations.

1 For purposes of determining prior serious traffic violations under  
2 this subsection, each conviction of or finding that a driver has  
3 committed a serious traffic violation while driving a commercial motor  
4 vehicle or noncommercial motor vehicle, arising from a separate  
5 incident occurring within a three-year period, must be counted.

6 (6) A person is disqualified from driving a commercial motor  
7 vehicle for a period of:

8 (a) Not less than ninety days nor more than one year if convicted  
9 of or found to have committed a first violation of an out-of-service  
10 order while driving a commercial vehicle;

11 (b) Not less than one year nor more than five years if, during a  
12 ten-year period, the person is convicted of or is found to have  
13 committed two violations of out-of-service orders while driving a  
14 commercial motor vehicle in separate incidents;

15 (c) Not less than three years nor more than five years if, during  
16 a ten-year period, the person is convicted of or is found to have  
17 committed three or more violations of out-of-service orders while  
18 driving commercial motor vehicles in separate incidents;

19 (d) Not less than one hundred eighty days nor more than two years  
20 if the person is convicted of or is found to have committed a first  
21 violation of an out-of-service order while transporting hazardous  
22 materials, or while operating motor vehicles designed to transport  
23 sixteen or more passengers, including the driver. A person is  
24 disqualified for a period of not less than three years nor more than  
25 five years if, during a ten-year period, the person is convicted of or  
26 is found to have committed subsequent violations of out-of-service  
27 orders, in separate incidents, while transporting hazardous materials,  
28 or while operating motor vehicles designed to transport sixteen or more  
29 passengers, including the driver.

30 (7) A person is disqualified from driving a commercial motor  
31 vehicle if a report has been received by the department under RCW  
32 46.25.125 that the person has received a (~~confirmed~~) verified  
33 positive drug test or positive alcohol confirmation test (~~either~~) as  
34 part of the testing program (~~required by 49 C.F.R. 382 or~~) conducted  
35 under 49 C.F.R. 40 (~~or as part of a preemployment drug test~~). A  
36 disqualification under this subsection remains in effect until the  
37 person undergoes a drug and alcohol assessment by (~~an agency certified~~  
38 ~~by the department of social and health services and, if the person is~~

1 ~~classified as an alcoholic, drug addict, alcohol abuser, or drug~~  
2 ~~abuser, until~~) a substance abuse professional meeting the requirements  
3 of 49 C.F.R. 40, and the person presents evidence of satisfactory  
4 participation in or successful completion of a drug or alcohol  
5 treatment and/or education program (~~that has been certified by the~~  
6 ~~department of social and health services under chapter 70.96A RCW~~) as  
7 recommended by the substance abuse professional, and until the person  
8 has met the requirements of RCW 46.25.100. The (~~agency making a drug~~  
9 ~~and alcohol assessment under this section~~) substance abuse  
10 professional shall forward a diagnostic evaluation and treatment  
11 recommendation to the department of licensing for use in determining  
12 the person's eligibility for driving a commercial motor vehicle.  
13 Persons who are disqualified under this subsection more than twice in  
14 a five-year period are disqualified for life.

15 (8)(a) A person is disqualified from driving a commercial motor  
16 vehicle for the period of time specified in (b) of this subsection if  
17 he or she is convicted of or is found to have committed one of the  
18 following six offenses at a railroad-highway grade crossing while  
19 operating a commercial motor vehicle in violation of a federal, state,  
20 or local law or regulation:

21 (i) For drivers who are not required to always stop, failing to  
22 slow down and check that the tracks are clear of an approaching train;

23 (ii) For drivers who are not required to always stop, failing to  
24 stop before reaching the crossing, if the tracks are not clear;

25 (iii) For drivers who are always required to stop, failing to stop  
26 before driving onto the crossing;

27 (iv) For all drivers, failing to have sufficient space to drive  
28 completely through the crossing without stopping;

29 (v) For all drivers, failing to obey a traffic control device or  
30 the directions of an enforcement officer at the crossing;

31 (vi) For all drivers, failing to negotiate a crossing because of  
32 insufficient undercarriage clearance.

33 (b) A person is disqualified from driving a commercial motor  
34 vehicle for a period of:

35 (i) Not less than sixty days if the driver is convicted of or is  
36 found to have committed a first violation of a railroad-highway grade  
37 crossing violation;

1 (ii) Not less than one hundred twenty days if the driver is  
2 convicted of or is found to have committed a second railroad-highway  
3 grade crossing violation in separate incidents within a three-year  
4 period;

5 (iii) Not less than one year if the driver is convicted of or is  
6 found to have committed a third or subsequent railroad-highway grade  
7 crossing violation in separate incidents within a three-year period.

8 (9) A person is disqualified from driving a commercial motor  
9 vehicle for not more than one year if a report has been received by the  
10 department from the federal motor carrier safety administration that  
11 the person's driving has been determined to constitute an imminent  
12 hazard as defined by 49 C.F.R. 383.5.

13 (10) Within ten days after suspending, revoking, or canceling a  
14 commercial driver's license or disqualifying a driver from operating a  
15 commercial motor vehicle, the department shall update its records to  
16 reflect that action.

17 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
18 preservation of the public peace, health, or safety, or support of the  
19 state government and its existing public institutions, and takes effect  
20 July 1, 2005.

--- END ---