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HOUSE BILL 1973

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State of Washington                      60th Legislature                      2007 Regular Session

By Representatives Kagi, Clibborn, Jarrett, Flannigan, Hinkle, Green, Dickerson, Hunter, Kenney and Goodman

Read first time 02/02/2007. Referred to Committee on Transportation.

1            AN ACT Relating to drug and alcohol testing of commercial vehicle  
2 drivers involved in motor vehicle accidents; amending RCW 46.25.090,  
3 46.25.120, and 46.25.170; adding a new section to chapter 46.25 RCW;  
4 and declaring an emergency.

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

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 46.25 RCW  
7 to read as follows:

8            (1) A person may not drive, operate, or be in physical control of  
9 a commercial motor vehicle with the presence of any Schedule I drug, as  
10 listed in RCW 69.50.204, or its metabolite, or Schedule II drug, as  
11 listed in RCW 69.50.206, or its metabolite, in his or her blood and be  
12 involved in a motor vehicle accident in which there is:

13            (a) A human fatality;

14            (b) Bodily injury to any person who, as a result of the injury,  
15 immediately receives medical treatment away from the scene of the  
16 accident; or

17            (c) One or more motor vehicles that incur disabling damage as a  
18 result of the accident, requiring the motor vehicle to be transported  
19 away from the scene by a tow truck or other motor vehicle.

1 (2) Law enforcement or appropriate officials shall issue an out-of-  
2 service order valid for twenty-four hours against a person who drives,  
3 operates, or is in physical control of a commercial motor vehicle with  
4 the presence of any Schedule I drug, as listed in RCW 69.50.204, or its  
5 metabolite, or Schedule II drug, as listed in RCW 69.50.206, or its  
6 metabolite, in his or her blood and is involved in a motor vehicle  
7 accident in which subsection (1)(a), (b), or (c) of this section  
8 occurs, or who refuses to take a test to determine the presence of any  
9 Schedule I drug, as listed in RCW 69.50.204, or its metabolite, or  
10 Schedule II drug, as listed in RCW 69.50.206, or its metabolite, in his  
11 or her blood under RCW 46.25.120(3).

12 (3) It is an affirmative defense to a violation of subsection (1)  
13 of this section, which the defendant must prove by a preponderance of  
14 the evidence, that the defendant had a valid prescription for any  
15 controlled substance consumed, and that the defendant consumed the  
16 controlled substance according to the prescription's directions and  
17 warnings.

18 **Sec. 2.** RCW 46.25.090 and 2006 c 327 s 4 are each amended to read  
19 as follows:

20 (1) A person is disqualified from driving a commercial motor  
21 vehicle for a period of not less than one year if a report has been  
22 received by the department pursuant to RCW 46.20.308 or 46.25.120, or  
23 if the person has been convicted of a first violation, within this or  
24 any other jurisdiction, of:

25 (a) Driving a motor vehicle under the influence of alcohol or any  
26 drug;

27 (b) Driving a commercial motor vehicle while the alcohol  
28 concentration in the person's system is 0.04 or more, or driving a  
29 noncommercial motor vehicle while the alcohol concentration in the  
30 person's system is 0.08 or more, or is 0.02 or more if the person is  
31 under age twenty-one, as determined by any testing methods approved by  
32 law in this state or any other state or 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 or tests to determine the driver's

1 alcohol concentration or the presence of any drug while driving a motor  
2 vehicle;

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

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

11 (h) Driving a commercial motor vehicle with the presence of any  
12 Schedule I drug, as listed in RCW 69.50.204, or its metabolite, or  
13 Schedule II drug, as listed in RCW 69.50.206, or its metabolite, in his  
14 or her blood and being involved in a motor vehicle accident in which  
15 there is:

16 (i) A human fatality;

17 (ii) Bodily injury to any person who, as a result of the injury,  
18 immediately receives medical treatment away from the scene of the  
19 accident; or

20 (iii) One or more motor vehicles that incur disabling damage as a  
21 result of the accident, requiring the motor vehicle to be transported  
22 away from the scene by a tow truck or other motor vehicle.

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

26 (2) A person is disqualified for life if it has been determined  
27 that the person has committed or has been convicted of two or more  
28 violations of any of the offenses specified in subsection (1) of this  
29 section, or any combination of those offenses, arising from two or more  
30 separate incidents.

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

35 (4) A person is disqualified from driving a commercial motor  
36 vehicle for life who uses a motor vehicle in the commission of a felony  
37 involving the manufacture, distribution, or dispensing of a controlled

1 substance, as defined by chapter 69.50 RCW, or possession with intent  
2 to manufacture, distribute, or dispense a controlled substance, as  
3 defined by chapter 69.50 RCW.

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

6 (i) Not less than sixty days if:

7 (A) Convicted of or found to have committed a second serious  
8 traffic violation while driving a commercial motor vehicle; or

9 (B) Convicted of reckless driving, where there has been a prior  
10 serious traffic violation; or

11 (ii) Not less than one hundred twenty days if:

12 (A) Convicted of or found to have committed a third or subsequent  
13 serious traffic violation while driving a commercial motor vehicle; or

14 (B) Convicted of reckless driving, where there has been two or more  
15 prior serious traffic violations.

16 (b) The disqualification period under (a)(ii) of this subsection  
17 must be in addition to any other previous period of disqualification.

18 (c) For purposes of determining prior serious traffic violations  
19 under this subsection, each conviction of or finding that a driver has  
20 committed a serious traffic violation while driving a commercial motor  
21 vehicle or noncommercial motor vehicle, arising from a separate  
22 incident occurring within a three-year period, must be counted.

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

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

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

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

36 (d) Not less than one hundred eighty days nor more than two years  
37 if the person is convicted of or is found to have committed a first  
38 violation of an out-of-service order while transporting hazardous

1 materials, or while operating motor vehicles designed to transport  
2 sixteen or more passengers, including the driver. A person is  
3 disqualified for a period of not less than three years nor more than  
4 five years if, during a ten-year period, the person is convicted of or  
5 is found to have committed subsequent violations of out-of-service  
6 orders, in separate incidents, while transporting hazardous materials,  
7 or while operating motor vehicles designed to transport sixteen or more  
8 passengers, including the driver.

9 (7) A person is disqualified from driving a commercial motor  
10 vehicle if a report has been received by the department under RCW  
11 46.25.125 that the person has received a verified positive drug test or  
12 positive alcohol confirmation test as part of the testing program  
13 conducted under 49 C.F.R. 40. A disqualification under this subsection  
14 remains in effect until the person undergoes a drug and alcohol  
15 assessment by a substance abuse professional meeting the requirements  
16 of 49 C.F.R. 40, and the person presents evidence of satisfactory  
17 participation in or successful completion of a drug or alcohol  
18 treatment and/or education program as recommended by the substance  
19 abuse professional, and until the person has met the requirements of  
20 RCW 46.25.100. The substance abuse professional shall forward a  
21 diagnostic evaluation and treatment recommendation to the department of  
22 licensing for use in determining the person's eligibility for driving  
23 a commercial motor vehicle. Persons who are disqualified under this  
24 subsection more than twice in a five-year period are disqualified for  
25 life.

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

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

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

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

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

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

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

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

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

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

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

19 (9) A person is disqualified from driving a commercial motor  
20 vehicle for not more than one year if a report has been received by the  
21 department from the federal motor carrier safety administration that  
22 the person's driving has been determined to constitute an imminent  
23 hazard as defined by 49 C.F.R. 383.5. A person who is simultaneously  
24 disqualified from driving a commercial motor vehicle under this  
25 subsection and under other provisions of this chapter, or under 49  
26 C.F.R. 383.52, shall serve those disqualification periods concurrently.

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

31 **Sec. 3.** RCW 46.25.120 and 2006 c 327 s 5 are each amended to read  
32 as follows:

33 (1) A person who drives a commercial motor vehicle within this  
34 state is deemed to have given consent, subject to RCW 46.61.506, to  
35 take a test or tests of that person's blood or breath for the purpose  
36 of determining that person's alcohol concentration or the presence of  
37 other drugs.

1 (2) A test or tests may be administered at the direction of a law  
2 enforcement officer, who after stopping or detaining the commercial  
3 motor vehicle driver, has probable cause to believe that driver was  
4 driving a commercial motor vehicle while having alcohol in his or her  
5 system or while under the influence of any drug.

6 (3) Any person who drives a commercial motor vehicle within this  
7 state and is involved in a motor vehicle accident in which there is:  
8 (a) A human fatality; (b) bodily injury to any person who, as a result  
9 of the injury, immediately receives medical treatment away from the  
10 scene of the accident; or (c) one or more motor vehicles that incur  
11 disabling damage as a result of the accident, requiring the motor  
12 vehicle to be transported away from the scene by a tow truck or other  
13 motor vehicle shall, at the direction of a law enforcement officer,  
14 submit to a test of his or her breath or blood for the purpose of  
15 determining the alcohol concentration in his or her breath or blood and  
16 a test of his or her blood for the purpose of determining the presence  
17 of any Schedule I drug, as listed in RCW 69.50.204, or its metabolite,  
18 or Schedule II drug, as listed in RCW 69.50.206, or its metabolite, in  
19 his or her blood.

20 (4) The law enforcement officer requesting the test under  
21 subsection (1) of this section shall warn the person requested to  
22 submit to the test that a refusal to submit will result in that person  
23 being disqualified from operating a commercial motor vehicle under RCW  
24 46.25.090.

25 ~~((4))~~ (5) If the person refuses testing, ~~((or))~~ submits to a test  
26 that discloses an alcohol concentration of 0.04 or more, or submits to  
27 a blood test under subsection (3) of this section that discloses the  
28 presence of any Schedule I drug, as listed in RCW 69.50.204, or its  
29 metabolite, or Schedule II drug, as listed in RCW 69.50.206, or its  
30 metabolite, the law enforcement officer shall submit a sworn report to  
31 the department certifying that the test was requested pursuant to  
32 subsection (1) or (3) of this section and that the person refused to  
33 submit to testing, ~~((or))~~ submitted to a test that disclosed an alcohol  
34 concentration of 0.04 or more, or submitted to a blood test under  
35 subsection (3) of this section that disclosed the presence of any  
36 Schedule I drug, as listed in RCW 69.50.204, or its metabolite, or  
37 Schedule II drug, as listed in RCW 69.50.206, or its metabolite.

1        ~~((+5+))~~ (6) Upon receipt of the sworn report of a law enforcement  
2 officer under subsection ~~((+4+))~~ (5) of this section, the department  
3 shall disqualify the driver from driving a commercial motor vehicle  
4 under RCW 46.25.090, subject to the hearing provisions of RCW 46.20.329  
5 and 46.20.332. The hearing shall be conducted in the county of the  
6 arrest. For the purposes of this section, the hearing shall cover the  
7 issues of whether a law enforcement officer had reasonable grounds to  
8 believe the person had been driving or was in actual physical control  
9 of a commercial motor vehicle within this state while having alcohol in  
10 the person's system or while under the influence of any drug, whether  
11 the person refused to submit to the test or tests upon request of the  
12 officer after having been informed that the refusal would result in the  
13 disqualification of the person from driving a commercial motor vehicle,  
14 ~~((and,))~~ if the test was administered, whether the results indicated an  
15 alcohol concentration of 0.04 percent or more or the presence of any  
16 Schedule I drug, as listed in RCW 69.50.204, or its metabolite, or  
17 Schedule II drug, as listed in RCW 69.50.206, or its metabolite,  
18 whether the person had a valid prescription for any controlled  
19 substance consumed, and whether the person consumed the controlled  
20 substance according to the prescription's directions and warnings. The  
21 department shall order that the disqualification of the person either  
22 be rescinded or sustained. Any decision by the department  
23 disqualifying a person from driving a commercial motor vehicle is  
24 stayed and does not take effect while a formal hearing is pending under  
25 this section or during the pendency of a subsequent appeal to superior  
26 court so long as there is no conviction for a moving violation or no  
27 finding that the person has committed a traffic infraction that is a  
28 moving violation during the pendency of the hearing and appeal. If the  
29 disqualification of the person is sustained after the hearing, the  
30 person who is disqualified may file a petition in the superior court of  
31 the county of arrest to review the final order of disqualification by  
32 the department in the manner provided in RCW 46.20.334.

33        ~~((+6+))~~ (7) If a motor carrier or employer who is required to have  
34 a testing program under 49 C.F.R. 382 knows that a commercial driver in  
35 his or her employ has refused to submit to testing under this section  
36 and has not been disqualified from driving a commercial motor vehicle,  
37 the employer may notify law enforcement or his or her medical review



1 officer or breath alcohol technician that the driver has refused to  
2 submit to the required testing.

3 ~~((7))~~ (8) The hearing provisions of this section do not apply to  
4 those persons disqualified from driving a commercial motor vehicle  
5 under RCW 46.25.090(7).

6 **Sec. 4.** RCW 46.25.170 and 1989 c 178 s 19 are each amended to read  
7 as follows:

8 (1) A person subject to RCW 81.04.405 who is determined by the  
9 utilities and transportation commission, after notice, to have  
10 committed an act that is in violation of RCW 46.25.020, 46.25.030,  
11 46.25.040, 46.25.050, ~~(( $\epsilon$ ))~~ 46.25.110, or section 1 of this act is  
12 liable to Washington state for the civil penalties provided for in RCW  
13 81.04.405.

14 (2) A person who violates or fails to comply with, or who procures,  
15 aids, or abets in the violation of any provision of RCW 46.25.020,  
16 46.25.030, 46.25.040, 46.25.050, ~~(( $\epsilon$ ))~~ 46.25.110, or section 1 of this  
17 act is guilty of a gross misdemeanor.

18 NEW SECTION. **Sec. 5.** This act is necessary for the immediate  
19 preservation of the public peace, health, or safety, or support of the  
20 state government and its existing public institutions, and takes effect  
21 immediately.

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