

HB 1229 - S AMD 399

By Senators Haugen, King

ADOPTED 04/21/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 46.25.010 and 2009 c 181 s 2 are each amended to read
4 as follows:

5 The definitions set forth in this section apply throughout this
6 chapter.

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

10 (2) "Alcohol concentration" means:

11 (a) The number of grams of alcohol per one hundred milliliters of
12 blood; or

13 (b) The number of grams of alcohol per two hundred ten liters of
14 breath.

15 (3) "Commercial driver's license" (CDL) means a license issued to
16 an individual under chapter 46.20 RCW that has been endorsed in
17 accordance with the requirements of this chapter to authorize the
18 individual to drive a class of commercial motor vehicle.

19 (4) The "commercial driver's license information system" (CDLIS) is
20 the information system established pursuant to (~~the CMVSA~~) 49 U.S.C.
21 Sec. 31309 to serve as a clearinghouse for locating information related
22 to the licensing and identification of commercial motor vehicle
23 drivers.

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

26 (6) "Commercial motor vehicle" means a motor vehicle or combination
27 of motor vehicles used in commerce to transport passengers or property
28 if the motor vehicle:

29 (a) Has a gross vehicle weight rating of 11,794 kilograms or more

1 (26,001 pounds or more) inclusive of a towed unit with a gross vehicle
2 weight rating of more than 4,536 kilograms (10,000 pounds or more); or

3 (b) Has a gross vehicle weight rating of 11,794 kilograms or more
4 (26,001 pounds or more); or

5 (c) Is designed to transport sixteen or more passengers, including
6 the driver; or

7 (d) Is of any size and is used in the transportation of hazardous
8 materials as defined in this section; or

9 (e) Is a school bus regardless of weight or size.

10 (7) "Conviction" means an unvacated adjudication of guilt, or a
11 determination that a person has violated or failed to comply with the
12 law in a court of original jurisdiction or by an authorized
13 administrative tribunal, an unvacated forfeiture of bail or collateral
14 deposited to secure the person's appearance in court, a plea of guilty
15 or nolo contendere accepted by the court, the payment of a fine or
16 court cost, entry into a deferred prosecution program under chapter
17 10.05 RCW, or violation of a condition of release without bail,
18 regardless of whether or not the penalty is rebated, suspended, or
19 probated.

20 (8) "Disqualification" means a prohibition against driving a
21 commercial motor vehicle.

22 (9) "Drive" means to drive, operate, or be in physical control of
23 a motor vehicle in any place open to the general public for purposes of
24 vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and
25 46.25.120, "drive" includes operation or physical control of a motor
26 vehicle anywhere in the state.

27 (10) "Drugs" are those substances as defined by RCW 69.04.009,
28 including, but not limited to, those substances defined by 49 C.F.R.
29 Sec. 40.3.

30 (11) "Employer" means any person, including the United States, a
31 state, or a political subdivision of a state, who owns or leases a
32 commercial motor vehicle, or assigns a person to drive a commercial
33 motor vehicle.

34 (12) "Gross vehicle weight rating" (GVWR) means the value specified
35 by the manufacturer as the maximum loaded weight of a single vehicle.
36 The GVWR of a combination or articulated vehicle, commonly referred to
37 as the "gross combined weight rating" or GCWR, is the GVWR of the power
38 unit plus the GVWR of the towed unit or units. If the GVWR of any unit

1 cannot be determined, the actual gross weight will be used. If a
2 vehicle with a GVWR of less than 11,794 kilograms (26,001 pounds or
3 less) has been structurally modified to carry a heavier load, then the
4 actual gross weight capacity of the modified vehicle, as determined by
5 RCW 46.44.041 and 46.44.042, will be used as the GVWR.

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

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

15 (15) "Out-of-service order" means a declaration by an authorized
16 enforcement officer of a federal, state, Canadian, Mexican, or local
17 jurisdiction that a driver, a commercial motor vehicle, or a motor
18 carrier operation is out-of-service pursuant to 49 C.F.R. Secs. 386.72,
19 392.5, 395.13, 396.9, or compatible laws, or the North American uniform
20 out-of-service criteria.

21 (16) "Positive alcohol confirmation test" means an alcohol
22 confirmation test that:

23 (a) Has been conducted by a breath alcohol technician under 49
24 C.F.R. Part 40; and

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

26 A report that a person has refused an alcohol test, under
27 circumstances that constitute the refusal of an alcohol test under 49
28 C.F.R. Part 40, will be considered equivalent to a report of a positive
29 alcohol confirmation test for the purposes of this chapter.

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

34 (18) "Serious traffic violation" means:

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

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

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

4 (d) Driving a commercial motor vehicle without obtaining a
5 commercial driver's license;

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

12 (f) Driving a commercial motor vehicle without the proper class of
13 commercial driver's license endorsement or endorsements for the
14 specific vehicle group being operated or for the passenger or type of
15 cargo being transported; and

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

19 (19) "State" means a state of the United States and the District of
20 Columbia.

21 (20) "Substance abuse professional" means an alcohol and drug
22 specialist meeting the credentials, knowledge, training, and continuing
23 education requirements of 49 C.F.R. Sec. 40.281.

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

30 (22) "Type of driving" means one of the following:

31 (a) "Nonexcepted interstate," which means the CDL holder or
32 applicant operates or expects to operate in interstate commerce, is
33 both subject to and meets the qualification requirements under 49
34 C.F.R. Part 391 as it existed on the effective date of this section, or
35 such subsequent date as may be provided by the department by rule,
36 consistent with the purposes of this section, and is required to obtain
37 a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it

1 existed on the effective date of this section, or such subsequent date
2 as may be provided by the department by rule, consistent with the
3 purposes of this section;

4 (b) "Excepted interstate," which means the CDL holder or applicant
5 operates or expects to operate in interstate commerce, but engages
6 exclusively in transportation or operations excepted under 49 C.F.R.
7 Secs. 390.3(f), 391.2, 391.68, or 398.3, as they existed on the
8 effective date of this section, or such subsequent date as may be
9 provided by the department by rule, consistent with the purposes of
10 this section, from all or parts of the qualification requirements of 49
11 C.F.R. Part 391 as it existed on the effective date of this section, or
12 such subsequent date as may be provided by the department by rule,
13 consistent with the purposes of this section, and is therefore not
14 required to obtain a medical examiner's certificate under 49 C.F.R.
15 Sec. 391.45 as it existed on the effective date of this section, or
16 such subsequent date as may be provided by the department by rule,
17 consistent with the purposes of this section;

18 (c) "Nonexcepted intrastate," which means the CDL holder or
19 applicant operates only in intrastate commerce and is therefore subject
20 to state driver qualification requirements; or

21 (d) "Excepted intrastate," which means the CDL holder or applicant
22 operates in intrastate commerce, but engages exclusively in
23 transportation or operations excepted from all or parts of the state
24 driver qualification requirements.

25 (23) "United States" means the fifty states and the District of
26 Columbia.

27 ~~((+23))~~ (24) "Verified positive drug test" means a drug test
28 result or validity testing result from a laboratory certified under the
29 authority of the federal department of health and human services that:

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

32 (b) Has undergone review and final determination by a medical
33 review officer.

34 A report that a person has refused a drug test, under circumstances
35 that constitute the refusal of a federal department of transportation
36 drug test under 49 C.F.R. Part 40, will be considered equivalent to a
37 report of a verified positive drug test for the purposes of this
38 chapter.

1 **Sec. 2.** RCW 46.25.080 and 2004 c 249 s 8 and 2004 c 187 s 5 are
2 each reenacted and amended to read as follows:

3 (1) The commercial driver's license must be marked "commercial
4 driver's license" or "CDL," and must be, to the maximum extent
5 practicable, tamperproof. It must include, but not be limited to, the
6 following information:

7 (a) The name and residence address of the person;

8 (b) The person's color photograph;

9 (c) A physical description of the person including sex, height,
10 weight, and eye color;

11 (d) Date of birth;

12 (e) The person's social security number or any number or identifier
13 deemed appropriate by the department;

14 (f) The person's signature;

15 (g) The class or type of commercial motor vehicle or vehicles that
16 the person is authorized to drive, together with any endorsements or
17 restrictions;

18 (h) The name of the state; and

19 (i) The dates between which the license is valid.

20 (2) Commercial driver's licenses may be issued with the
21 classifications, endorsements, and restrictions set forth in this
22 subsection. The holder of a valid commercial driver's license may
23 drive all vehicles in the class for which that license is issued and
24 all lesser classes of vehicles except motorcycles and vehicles that
25 require an endorsement, unless the proper endorsement appears on the
26 license.

27 (a) Licenses may be classified as follows:

28 (i) Class A is a combination of vehicles with a gross combined
29 weight rating (GCWR) of 26,001 pounds or more, if the GVWR of the
30 vehicle or vehicles being towed is in excess of 10,000 pounds.

31 (ii) Class B is a single vehicle with a GVWR of 26,001 pounds or
32 more, and any such vehicle towing a vehicle not in excess of 10,000
33 pounds.

34 (iii) Class C is a single vehicle with a GVWR of less than 26,001
35 pounds or any such vehicle towing a vehicle with a GVWR not in excess
36 of 10,000 pounds consisting of:

37 (A) Vehicles designed to transport sixteen or more passengers,
38 including the driver; or

1 (B) Vehicles used in the transportation of hazardous materials.

2 (b) The following endorsements and restrictions may be placed on a
3 license:

4 (i) "H" authorizes the driver to drive a vehicle transporting
5 hazardous materials.

6 (ii) "K" restricts the driver to vehicles not equipped with air
7 brakes.

8 (iii) "T" authorizes driving double and triple trailers.

9 (iv) "P1" authorizes driving all vehicles, other than school buses,
10 carrying passengers.

11 (v) "P2" authorizes driving vehicles with a GVWR of less than
12 26,001 pounds, other than school buses, carrying sixteen or more
13 passengers, including the driver.

14 (vi) "N" authorizes driving tank vehicles.

15 (vii) "X" represents a combination of hazardous materials and tank
16 vehicle endorsements.

17 (viii) "S" authorizes driving school buses.

18 (ix) "V" means that the driver has been issued a medical variance.

19 The license may be issued with additional endorsements and
20 restrictions as established by rule of the director.

21 (3) All school bus drivers must have either a "P1" or "P2"
22 endorsement depending on the GVWR of the school bus being driven.

23 (4) Before issuing a commercial driver's license, the department
24 shall obtain driving record information:

25 (a) Through the commercial driver's license information system;

26 (b) Through the national driver register;

27 (c) From the current state of record; and

28 (d) From all states where the applicant was previously licensed
29 over the last ten years to drive any type of motor vehicle.

30 A check under (d) of this subsection need be done only once, either
31 at the time of application for a new commercial driver's license, or
32 upon application for a renewal of a commercial driver's license for the
33 first time after July 1, 2005, provided a notation is made on the
34 driver's record confirming that the driving record check has been made
35 and noting the date it was completed.

36 (5) Within ten days after issuing a commercial driver's license,
37 the department must notify the commercial driver's license information
38 system of (~~that fact,~~) the information required under 49 C.F.R. Sec.

1 383.73 as it existed on the effective date of this section, or such
2 subsequent date as may be provided by the department by rule,
3 consistent with the purposes of this section and provide all
4 information required to ensure identification of the person.

5 (6) A commercial driver's license shall expire in the same manner
6 as provided in RCW 46.20.181.

7 (7) When applying for renewal of a commercial driver's license, the
8 applicant shall:

9 (a) Complete the application form required by RCW 46.25.070(1),
10 providing updated information and required certifications;

11 (b) Submit the application to the department in person; and

12 (c) If the applicant wishes to retain a hazardous materials
13 endorsement, take and pass the written test for a hazardous materials
14 endorsement.

15 NEW SECTION. Sec. 3. A new section is added to chapter 46.25 RCW
16 to read as follows:

17 (1)(a) Any person applying for a CDL must certify that he or she is
18 or expects to be engaged in one of the following types of driving:

19 (i) Nonexcepted interstate;

20 (ii) Excepted interstate;

21 (iii) Nonexcepted intrastate; or

22 (iv) Excepted intrastate.

23 (b) From January 30, 2012, to January 30, 2014, the department may
24 require that any person holding a CDL prior to the effective date of
25 this section must provide the department with the certification
26 required under (a) of this subsection. The CDL of a person failing to
27 submit the required certification is subject to downgrade under
28 subsection (4) of this section.

29 (2) A CDL applicant or holder who certifies under subsection
30 (1)(a)(i) of this section that he or she is or expects to be engaged in
31 nonexcepted interstate commerce must provide a copy of a medical
32 examiner's certificate prepared by a medical examiner, as defined in 49
33 C.F.R. Sec. 390.5 as it existed on the effective date of this section,
34 or such subsequent date as may be provided by the department by rule,
35 consistent with the purposes of this section. Upon submission, a copy
36 of the medical examiner's certificate must be date-stamped by the

1 department. A CDL holder who certifies under subsection (1)(a)(i) of
2 this section must submit a copy of each subsequently issued medical
3 examiner's certificate.

4 (3) For each operator of a commercial motor vehicle required to
5 have a commercial driver's license, the department must meet the
6 following requirements:

7 (a)(i) The driver's self-certification of type of driving under
8 subsection (1) of this section must be maintained on the driver's
9 record and the CDLIS driver record;

10 (ii) The copy of a medical examiner's certificate, when submitted
11 under subsection (2) of this section, must be retained for three years
12 beyond the date the certificate was issued; and

13 (iii) When a medical examiner's certificate is submitted under
14 subsection (2) of this section, the information required under 49
15 C.F.R. Sec. 383.73(j)(1)(iii) as it existed on the effective date of
16 this section, or such subsequent date as may be provided by the
17 department by rule, consistent with the purposes of this section must
18 be posted to the CDLIS driver record within ten calendar days from the
19 date submitted. The indicator of medical certification status, such as
20 "certified" or "not-certified," must be maintained on the driver's
21 record.

22 (b) Within ten calendar days of the driver's medical certification
23 status expiring or a medical variance expiring or being rescinded, the
24 medical certification status of the driver must be updated to "not-
25 certified."

26 (c) Within ten calendar days of receiving information from the
27 federal motor carrier safety administration regarding issuance or
28 renewal of a medical variance for a driver, the department must update
29 the CDLIS driver record to include the medical variance information.

30 (4)(a) If a driver's medical certification or medical variance
31 expires, or the federal motor carrier safety administration notifies
32 the department that a medical variance was removed or rescinded, the
33 department must:

34 (i) Notify the driver of his or her "not-certified" medical
35 certification status and that the CDL privilege will be removed from
36 the driver's license unless the driver submits a current medical
37 certificate or medical variance, or changes his or her self-
38 certification to driving only in excepted or intrastate commerce; and

1 (ii) Initiate procedures for downgrading the license. The CDL
2 downgrade must be completed and recorded within sixty days of the
3 driver's medical certification status becoming "not-certified" to
4 operate a commercial motor vehicle.

5 (b) Beginning January 30, 2014, if a driver fails to provide the
6 department with the certification required in subsection (1) of this
7 section, or a current medical examiner's certificate if the driver
8 self-certifies under subsection (1)(a)(i) of this section that he or
9 she is operating in nonexcepted interstate commerce as required in
10 subsection (2) of this section, the department must mark the CDLIS
11 driver record as "not-certified" and initiate a CDL downgrade in
12 accordance with (a)(ii) of this subsection.

13 (c) A driver whose CDL has been downgraded under this subsection
14 may restore the CDL privilege by providing the necessary certifications
15 or medical variance information to the department.

16 **Sec. 4.** RCW 46.25.090 and 2006 c 327 s 4 are each amended to read
17 as follows:

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

23 (a) Driving a motor vehicle under the influence of alcohol or any
24 drug;

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

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

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

34 (e) Refusing to submit to a test or tests to determine the driver's
35 alcohol concentration or the presence of any drug while driving a motor
36 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) A person is disqualified from driving a commercial motor
28 vehicle for a period of:

29 (i) Not less than sixty days if:

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

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

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

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

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

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

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

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

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

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

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

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

32 (7) A person is disqualified from driving a commercial motor
33 vehicle if a report has been received by the department under RCW
34 46.25.125 that the person has received a verified positive drug test or
35 positive alcohol confirmation test as part of the testing program
36 conducted under 49 C.F.R. 40. A disqualification under this subsection
37 remains in effect until the person undergoes a drug and alcohol
38 assessment by a substance abuse professional meeting the requirements

1 of 49 C.F.R. 40, and the person presents evidence of satisfactory
2 participation in or successful completion of a drug or alcohol
3 treatment and/or education program as recommended by the substance
4 abuse professional, and until the person has met the requirements of
5 RCW 46.25.100. The substance abuse professional shall forward a
6 diagnostic evaluation and treatment recommendation to the department of
7 licensing for use in determining the person's eligibility for driving
8 a commercial motor vehicle. Persons who are disqualified under this
9 subsection more than twice in a five-year period are disqualified for
10 life.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **Sec. 5.** RCW 46.32.100 and 2010 c 161 s 1116 are each amended to
17 read as follows:

18 (1)(a) In addition to all other penalties provided by law, and
19 except as provided otherwise in (a)(i), (ii), or (iii) of this
20 subsection, a commercial motor vehicle that is subject to compliance
21 reviews under this chapter and an officer, agent, or employee of a
22 company operating a commercial motor vehicle who violates or who
23 procures, aids, or abets in the violation of this title or any order or
24 rule of the state patrol is liable for a penalty of one hundred dollars
25 for each violation.

26 (i) It is a violation of this chapter for a person operating a
27 commercial motor vehicle to fail to comply with the requirements of 49
28 C.F.R. Pt. 382, controlled substances and alcohol use and testing, 49
29 C.F.R. Sec. 391.15, disqualification of drivers, and 49 C.F.R. Sec.
30 396.9(c)(2), moving a vehicle placed out of service before the out of
31 service defects have been satisfactorily repaired. For each violation
32 the person is liable for a penalty of five hundred dollars.

33 (ii) The driver of a commercial motor vehicle who ~~((violates))~~ is
34 convicted of violating an out-of-service order is liable for a penalty
35 of at least ~~((one))~~ two thousand ~~((one))~~ five hundred dollars ~~((but not~~
36 ~~more than two thousand seven hundred fifty dollars for each))~~ for a

1 first violation, and not less than five thousand dollars for second or
2 subsequent violation.

3 (iii) An employer who allows ((~~a driver to operate~~)) the operation
4 of a commercial motor vehicle when there is an out-of-service order is
5 liable for a penalty of at least two thousand seven hundred fifty
6 dollars but not more than ((~~eleven~~)) twenty-five thousand dollars for
7 each violation.

8 (iv) Each violation under this subsection (1)(a) is a separate and
9 distinct offense, and in case of a continuing violation every day's
10 continuance is a separate and distinct violation.

11 (b) In addition to all other penalties provided by law, any motor
12 carrier, company, or any officer or agent of a motor carrier or company
13 operating a commercial motor vehicle subject to compliance reviews
14 under this chapter who refuses entry or to make the required records,
15 documents, and vehicles available to a duly authorized agent of the
16 state patrol is liable for a penalty of at least five thousand dollars
17 as well as an out-of-service order being placed on the department of
18 transportation number, as defined in RCW 46.16A.010, and vehicle
19 registration to operate. Each violation is a separate and distinct
20 offense, and in case of a continuing violation every day's continuance
21 is a separate and distinct violation.

22 (c) A motor carrier operating a commercial motor vehicle after
23 receiving a final unsatisfactory rating or being placed out of service
24 is liable for a penalty of not more than eleven thousand dollars for
25 each violation. Each violation is a separate and distinct offense, and
26 in case of a continuing violation every day's continuance is a separate
27 and distinct violation.

28 (d) A high-risk carrier is liable for double the amount of the
29 penalty of a prior violation if the high-risk carrier repeats the same
30 violation during a follow-up compliance review. Each repeat violation
31 is a separate and distinct offense, and in case of a repeat continuing
32 violation every day's continuance is a separate and distinct violation.

33 (2) The Washington state patrol may place an out-of-service order
34 on a department of transportation number, as defined in RCW 46.16A.010,
35 for violations of this chapter or for nonpayment of any monetary
36 penalties assessed by the state patrol or the utilities and
37 transportation commission, as a result of compliance reviews, or for
38 violations of cease and desist orders issued by the utilities and

1 transportation commission. The state patrol shall notify the
2 department of licensing when an out-of-service order has been placed on
3 a motor carrier's department of transportation number. The state
4 patrol shall notify the motor carrier when there has been an out-of-
5 service order placed on the motor carrier's department of
6 transportation number and the vehicle registrations have been revoked
7 by sending a notice by first-class mail using the last known address
8 for the registered or legal owner or owners, and recording the
9 transmittal on an affidavit of first-class mail. Notices under this
10 section fulfill the requirements of RCW 46.12.550. Motor carriers may
11 not be eligible for a new department of transportation number, vehicle
12 registration, or temporary permits to operate unless the violations
13 that resulted in the out-of-service order have been corrected.

14 (3) Any penalty provided in this section is due and payable when
15 the person incurring it receives a notice in writing from the state
16 patrol describing the violation and advising the person that the
17 penalty is due.

18 (a)(i) Any motor carrier who incurs a penalty as provided in this
19 section, except for a high-risk carrier that incurs a penalty for a
20 repeat violation during a follow-up compliance review, may, upon
21 written application, request that the state patrol mitigate the
22 penalty. An application for mitigation must be received by the state
23 patrol within twenty days of the receipt of notice.

24 (ii) The state patrol may decline to consider any application for
25 mitigation.

26 (b) Any motor carrier who incurs a penalty as provided in this
27 section has a right to an administrative hearing under chapter 34.05
28 RCW to contest the violation or the penalty imposed, or both. In all
29 such hearings, the procedure and rules of evidence are as specified in
30 chapter 34.05 RCW except as otherwise provided in this chapter. Any
31 request for an administrative hearing must be made in writing and must
32 be received by the state patrol within twenty days after the later of
33 (i) receipt of the notice imposing the penalty, or (ii) disposition of
34 a request for mitigation, or the right to a hearing is waived.

35 (c) All penalties recovered under this section shall be paid into
36 the state treasury and credited to the state patrol highway account of
37 the motor vehicle fund.

