
SUBSTITUTE HOUSE BILL 2736

State of Washington 62nd Legislature 2012 Regular Session

By House Transportation (originally sponsored by Representative Hansen; by request of Department of Licensing)

READ FIRST TIME 02/06/12.

1 AN ACT Relating to commercial vehicle regulations for texting while
2 driving and flags on projecting loads; amending RCW 46.25.010,
3 46.61.668, and 46.37.140; and prescribing penalties.

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

5 **Sec. 1.** RCW 46.25.010 and 2011 c 227 s 1 are each amended to read
6 as follows:

7 The definitions set forth in this section apply throughout this
8 chapter.

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

12 (2) "Alcohol concentration" means:

13 (a) The number of grams of alcohol per one hundred milliliters of
14 blood; or

15 (b) The number of grams of alcohol per two hundred ten liters of
16 breath.

17 (3) "Commercial driver's license" (CDL) means a license issued to
18 an individual under chapter 46.20 RCW that has been endorsed in

1 accordance with the requirements of this chapter to authorize the
2 individual to drive a class of commercial motor vehicle.

3 (4) The "commercial driver's license information system" (CDLIS) is
4 the information system established pursuant to 49 U.S.C. Sec. 31309 to
5 serve as a clearinghouse for locating information related to the
6 licensing and identification of commercial motor vehicle drivers.

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

9 (6) "Commercial motor vehicle" means a motor vehicle or combination
10 of motor vehicles used in commerce to transport passengers or property
11 if the motor vehicle:

12 (a) Has a gross vehicle weight rating of 11,794 kilograms or more
13 (26,001 pounds or more) inclusive of a towed unit with a gross vehicle
14 weight rating of more than 4,536 kilograms (10,000 pounds or more); or

15 (b) Has a gross vehicle weight rating of 11,794 kilograms or more
16 (26,001 pounds or more); or

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

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

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

22 (7) "Conviction" means an unvacated adjudication of guilt, or a
23 determination that a person has violated or failed to comply with the
24 law in a court of original jurisdiction or by an authorized
25 administrative tribunal, an unvacated forfeiture of bail or collateral
26 deposited to secure the person's appearance in court, a plea of guilty
27 or nolo contendere accepted by the court, the payment of a fine or
28 court cost, entry into a deferred prosecution program under chapter
29 10.05 RCW, or violation of a condition of release without bail,
30 regardless of whether or not the penalty is rebated, suspended, or
31 probated.

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 Sec. 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 vehicle.
10 The GVWR of a combination or articulated vehicle, commonly referred to
11 as the "gross combined weight rating" or GCWR, is the GVWR of the power
12 unit plus the GVWR of the towed unit or units. If the GVWR of any unit
13 cannot be determined, the actual gross weight will be used. If a
14 vehicle with a GVWR of less than 11,794 kilograms (26,001 pounds or
15 less) has been structurally modified to carry a heavier load, then the
16 actual gross weight capacity of the modified vehicle, as determined by
17 RCW 46.44.041 and 46.44.042, will be used as the GVWR.

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

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

27 (15) "Out-of-service order" means a declaration by an authorized
28 enforcement officer of a federal, state, Canadian, Mexican, or local
29 jurisdiction that a driver, a commercial motor vehicle, or a motor
30 carrier operation is out-of-service pursuant to 49 C.F.R. Secs. 386.72,
31 392.5, 395.13, 396.9, or compatible laws, or the North American uniform
32 out-of-service criteria.

33 (16) "Positive alcohol confirmation test" means an alcohol
34 confirmation test that:

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

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

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

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

9 (18) "Serious traffic violation" means:

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

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

13 (c) Texting, defined as a violation of RCW 46.61.668(1)(b) or an
14 equivalent administrative regulation or local law, ordinance,
15 regulation, or resolution;

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

19 ((+d)) (e) Driving a commercial motor vehicle without obtaining a
20 commercial driver's license;

21 ((+e)) (f) Driving a commercial motor vehicle without a commercial
22 driver's license in the driver's possession; however, any individual
23 who provides proof to the court by the date the individual must appear
24 in court or pay any fine for such a violation, that the individual held
25 a valid CDL on the date the citation was issued, is not guilty of a
26 "serious traffic ((+offense)) violation";

27 ((+f)) (g) Driving a commercial motor vehicle without the proper
28 class of commercial driver's license endorsement or endorsements for
29 the specific vehicle group being operated or for the passenger or type
30 of cargo being transported; and

31 ((+g)) (h) Any other violation of a state or local law relating to
32 motor vehicle traffic control, other than a parking violation, that the
33 department determines by rule to be serious.

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

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

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

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

8 (a) "Nonexcepted interstate," which means the CDL holder or
9 applicant operates or expects to operate in interstate commerce, is
10 both subject to and meets the qualification requirements under 49
11 C.F.R. Part 391 as it existed on January 30, 2012, or such subsequent
12 date as may be provided by the department by rule, consistent with the
13 purposes of this section, and is required to obtain a medical
14 examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on
15 January 30, 2012, or such subsequent date as may be provided by the
16 department by rule, consistent with the purposes of this section;

17 (b) "Excepted interstate," which means the CDL holder or applicant
18 operates or expects to operate in interstate commerce, but engages
19 exclusively in transportation or operations excepted under 49 C.F.R.
20 Secs. 390.3(f), 391.2, 391.68, or 398.3, as they existed on January 30,
21 2012, or such subsequent date as may be provided by the department by
22 rule, consistent with the purposes of this section, from all or parts
23 of the qualification requirements of 49 C.F.R. Part 391 as it existed
24 on January 30, 2012, or such subsequent date as may be provided by the
25 department by rule, consistent with the purposes of this section, and
26 is therefore not required to obtain a medical examiner's certificate
27 under 49 C.F.R. Sec. 391.45 as it existed on January 30, 2012, or such
28 subsequent date as may be provided by the department by rule,
29 consistent with the purposes of this section;

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

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

37 (23) "United States" means the fifty states and the District of
38 Columbia.

1 (24) "Verified positive drug test" means a drug test result or
2 validity testing result from a laboratory certified under the authority
3 of the federal department of health and human services that:

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

6 (b) Has undergone review and final determination by a medical
7 review officer.

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

13 **Sec. 2.** RCW 46.61.668 and 2010 c 223 s 4 are each amended to read
14 as follows:

15 (1)(a) Except as provided in subsection (2)(a) of this section, a
16 person operating a moving noncommercial motor vehicle who, by means of
17 an electronic wireless communications device, sends, reads, or writes
18 a text message, is guilty of a traffic infraction.

19 (b) Except as provided in subsection (2)(b) of this section, a
20 person driving a commercial motor vehicle, as defined in RCW 46.25.010,
21 including while temporarily stationary because of traffic, a traffic
22 control device, or other momentary delays, who, by means of an
23 electronic wireless communications device, sends, reads, or writes a
24 text message, is guilty of a traffic infraction. For purposes of this
25 subsection, "driving" does not include operating a commercial motor
26 vehicle with or without the motor running when the driver has moved the
27 vehicle to the side of, or off, a highway and has stopped in a location
28 where the vehicle can safely remain stationary.

29 (c) A person does not send, read, or write a text message when he
30 or she reads, selects, or enters a phone number or name in a wireless
31 communications device for the purpose of making a phone call.

32 (2)(a) Subsection (1)(a) of this section does not apply to a person
33 operating:

34 ((+a)) (i) An authorized emergency vehicle;

35 ((+b)) (ii) A voice-operated global positioning or navigation
36 system that is affixed to the vehicle and that allows the user to send

1 or receive messages without diverting visual attention from the road or
2 engaging the use of either hand; or

3 ~~((e))~~ (iii) A moving motor vehicle while using an electronic
4 wireless communications device to:

- 5 ~~((i))~~ (A) Report illegal activity;
- 6 ~~((ii))~~ (B) Summon medical or other emergency help;
- 7 ~~((iii))~~ (C) Prevent injury to a person or property; or
- 8 ~~((iv))~~ (D) Relay information that is time sensitive between a
9 transit or for-hire operator and that operator's dispatcher, in which
10 the device is permanently affixed to the vehicle.

11 (b) Subsection (1)(b) of this section does not apply to a person
12 operating a commercial motor vehicle when necessary to communicate with
13 law enforcement officials or other emergency services.

14 (3) Infractions under subsection (1)(a) of this section shall not
15 become part of the driver's record under RCW 46.52.101 and 46.52.120.
16 Additionally, a finding that a person has committed a traffic
17 infraction under subsection (1)(a) of this section shall not be made
18 available to insurance companies or employers.

19 **Sec. 3.** RCW 46.37.140 and 1977 ex.s. c 355 s 12 are each amended
20 to read as follows:

21 ~~((Whenever the load upon any vehicle extends to the rear four feet
22 or more beyond the bed or body of such vehicle there shall be displayed
23 at the extreme rear end of the load, at the times specified in RCW
24 46.37.020, two red lamps, visible from a distance of at least five
25 hundred feet to the rear, two red reflectors visible at night from all
26 distances within six hundred feet to one hundred feet to the rear when
27 directly in front of lawful lower beams of headlamps, and located so as
28 to indicate maximum width, and on each side one red lamp, visible from
29 a distance of at least five hundred feet to the side, located so as to
30 indicate maximum overhang. There shall be displayed at all other
31 times)) (1) On any vehicle having a load ((which)) that extends more
32 than four inches beyond its sides or more than four feet beyond its
33 rear, there must be displayed red or orange fluorescent warning flags,
34 not less than ~~((twelve))~~ eighteen inches square, marking the
35 extremities of such loads(~~(, at each point where a lamp would otherwise
36 be required by this section, under RCW 46.37.020))~~).~~

1 (2) Whenever the load upon any vehicle extends to the rear four
2 feet or more beyond the bed or body of the vehicle, there must be
3 displayed at the extreme rear end of the load at the times specified in
4 RCW 46.37.020:

5 (a) Two red lamps, visible from a distance of at least five hundred
6 feet to the rear;

7 (b) Two red reflectors, visible at night from all distances within
8 six hundred feet to one hundred feet to the rear when directly in front
9 of lawful lower beams of headlamps, and located so as to indicate
10 maximum width; and

11 (c) A red lamp on each side, visible from a distance of at least
12 five hundred feet to the side, and located so as to indicate maximum
13 overhang.

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