

HOUSE BILL REPORT

SB 6068

As Passed House:

April 9, 2009

Title: An act relating to the definition of "conviction" for purposes of the uniform commercial driver's license act.

Brief Description: Modifying the definition of "conviction" for the purposes of the uniform commercial driver's license act.

Sponsors: Senators Swecker, Haugen, King and Shin; by request of Department of Licensing.

Brief History:

Committee Activity:

Transportation: 3/23/09, 3/25/09 [DP].

Floor Activity

Passed House: 4/9/09, 64-34.

Brief Summary of Bill

- Requires entry into a deferred prosecution program to be treated as a conviction for commercial driver's license purposes.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass. Signed by 17 members: Representatives Clibborn, Chair; Liias, Vice Chair; Campbell, Cox, Driscoll, Finn, Flannigan, Johnson, Klippert, Rolfes, Simpson, Springer, Takko, Upthegrove, Wallace, Williams and Wood.

Minority Report: Do not pass. Signed by 9 members: Representatives Roach, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Armstrong, Eddy, Ericksen, Herrera, Kristiansen, Moeller and Shea.

Staff: David Munnecke (786-7315)

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A person who has been charged with a misdemeanor or gross misdemeanor may petition the court for entry into a deferred prosecution program if the person alleges that the wrongful conduct charged is the result of or caused by alcoholism, drug addiction, or mental health problems. A deferred prosecution program consists of treatment for the underlying problem, along with other conditions that may be imposed by the court. Entry into such a program defers prosecution for the criminal offense charged, and the charge is ultimately dismissed if the program is successfully completed.

A Federal Motor Carrier Safety Administration (FMCSA) regulation (CFR 384.226) prohibits states from masking, deferring imposition of judgment, or allowing an individual to enter into a diversion program that would prevent a commercial driver's license (CDL) holder's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law (except a parking violation) from appearing on the driver's record. A recent audit of Washington's CDL program by the FMCSA has determined that entry into a deferred prosecution program must be treated as a conviction for purposes of a commercial driver's license in order for the state to be in compliance with this federal regulation. A violation of a federal regulation can trigger the withholding of 5 percent of the state's federal-aid highway funds in the first year of the violation and 10 percent in each additional year.

Summary of Bill:

Entry into a deferred prosecution program is treated as a conviction for purposes of the individual's commercial driver's license.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill would affect a person who has a commercial driver's license but is arrested while driving a personal vehicle. It would only affect them to the extent that it would effect their commercial driver's license. The person could still enter into a deferred prosecution, but it would only affect the personal driver's license. Deferred prosecution has been shown to be slightly more effective than conviction when it comes to preventing recidivism.

The Department of Licensing (DOL) failed a federal audit because the federal government considers the state's deferred prosecution program a method by which people mask a conviction for an infraction. This is not allowed under federal law in the context of commercial driver's licenses. The DOL has tried to argue that deferred prosecution is not in violation of the federal law but has not been successful.

This bill might encourage people to go to trial due to the risk to their commercial driver's license. A person would still need to go through a treatment program if they were convicted

of driving under the influence, but they would not receive the benefit of having the violation removed from their record like they would through the deferred prosecution program.

There are 18 penalties established in Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. Washington is not currently being penalized for any violations, but if this bill does not pass the state would likely be penalized, which would be a first under the commercial driver's license penalties. This penalty would be \$17 million in the first year and \$34 million in subsequent years. The state would also be penalized in that holders of Washington commercial driver's licenses would not be eligible to drive in interstate commerce.

This bill does not apply retroactively, so individuals currently in a deferred prosecution program would not be affected.

(Opposed) None.

Persons Testifying: Clark Holloway, Department of Licensing; and Richard Struna, Washington State Department of Transportation.

Persons Signed In To Testify But Not Testifying: None.