
SENATE BILL 5686

State of Washington

62nd Legislature

2011 Regular Session

By Senators Hobbs, King, Haugen, and Shin; by request of Washington State Patrol

Read first time 02/07/11. Referred to Committee on Transportation.

1 AN ACT Relating to commercial motor vehicle out-of-service orders;
2 and amending RCW 46.25.090 and 46.32.100.

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

4 **Sec. 1.** RCW 46.25.090 and 2006 c 327 s 4 are each amended to read
5 as follows:

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

11 (a) Driving a motor vehicle under the influence of alcohol or any
12 drug;

13 (b) Driving a commercial motor vehicle while the alcohol
14 concentration in the person's system is 0.04 or more, or driving a
15 noncommercial motor vehicle while the alcohol concentration in the
16 person's system is 0.08 or more, or is 0.02 or more if the person is
17 under age twenty-one, as determined by any testing methods approved by
18 law in this state or any other state or jurisdiction;

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

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

4 (e) Refusing to submit to a test or tests to determine the driver's
5 alcohol concentration or the presence of any drug while driving a motor
6 vehicle;

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

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

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

18 (2) A person is disqualified for life if it has been determined
19 that the person has committed or has been convicted of two or more
20 violations of any of the offenses specified in subsection (1) of this
21 section, or any combination of those offenses, arising from two or more
22 separate incidents.

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

27 (4) A person is disqualified from driving a commercial motor
28 vehicle for life who uses a motor vehicle in the commission of a felony
29 involving the manufacture, distribution, or dispensing of a controlled
30 substance, as defined by chapter 69.50 RCW, or possession with intent
31 to manufacture, distribute, or dispense a controlled substance, as
32 defined by chapter 69.50 RCW.

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

35 (i) Not less than sixty days if:

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

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

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

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

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

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

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

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

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

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

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

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

1 (7) A person is disqualified from driving a commercial motor
2 vehicle if a report has been received by the department under RCW
3 46.25.125 that the person has received a verified positive drug test or
4 positive alcohol confirmation test as part of the testing program
5 conducted under 49 C.F.R. 40. A disqualification under this subsection
6 remains in effect until the person undergoes a drug and alcohol
7 assessment by a substance abuse professional meeting the requirements
8 of 49 C.F.R. 40, and the person presents evidence of satisfactory
9 participation in or successful completion of a drug or alcohol
10 treatment and/or education program as recommended by the substance
11 abuse professional, and until the person has met the requirements of
12 RCW 46.25.100. The substance abuse professional shall forward a
13 diagnostic evaluation and treatment recommendation to the department of
14 licensing for use in determining the person's eligibility for driving
15 a commercial motor vehicle. Persons who are disqualified under this
16 subsection more than twice in a five-year period are disqualified for
17 life.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **Sec. 2.** RCW 46.32.100 and 2010 c 161 s 1116 are each amended to
24 read as follows:

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

33 (i) It is a violation of this chapter for a person operating a
34 commercial motor vehicle to fail to comply with the requirements of 49
35 C.F.R. Pt. 382, controlled substances and alcohol use and testing, 49
36 C.F.R. Sec. 391.15, disqualification of drivers, and 49 C.F.R. Sec.

1 396.9(c)(2), moving a vehicle placed out of service before the out of
2 service defects have been satisfactorily repaired. For each violation
3 the person is liable for a penalty of five hundred dollars.

4 (ii) The driver of a commercial motor vehicle who (~~(violates)~~) is
5 convicted of violating an out-of-service order is liable for a penalty
6 of at least (~~(one)~~) two thousand (~~(one)~~) five hundred dollars (~~((but not~~
7 ~~more than two thousand seven hundred fifty dollars for each))~~) for a
8 first violation, and not less than five thousand dollars for second or
9 subsequent violation.

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

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

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

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

35 (d) A high-risk carrier is liable for double the amount of the
36 penalty of a prior violation if the high-risk carrier repeats the same
37 violation during a follow-up compliance review. Each repeat violation

1 is a separate and distinct offense, and in case of a repeat continuing
2 violation every day's continuance is a separate and distinct violation.

3 (2) The Washington state patrol may place an out-of-service order
4 on a department of transportation number, as defined in RCW 46.16A.010,
5 for violations of this chapter or for nonpayment of any monetary
6 penalties assessed by the state patrol or the utilities and
7 transportation commission, as a result of compliance reviews, or for
8 violations of cease and desist orders issued by the utilities and
9 transportation commission. The state patrol shall notify the
10 department of licensing when an out-of-service order has been placed on
11 a motor carrier's department of transportation number. The state
12 patrol shall notify the motor carrier when there has been an out-of-
13 service order placed on the motor carrier's department of
14 transportation number and the vehicle registrations have been revoked
15 by sending a notice by first-class mail using the last known address
16 for the registered or legal owner or owners, and recording the
17 transmittal on an affidavit of first-class mail. Notices under this
18 section fulfill the requirements of RCW 46.12.550. Motor carriers may
19 not be eligible for a new department of transportation number, vehicle
20 registration, or temporary permits to operate unless the violations
21 that resulted in the out-of-service order have been corrected.

22 (3) Any penalty provided in this section is due and payable when
23 the person incurring it receives a notice in writing from the state
24 patrol describing the violation and advising the person that the
25 penalty is due.

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

32 (ii) The state patrol may decline to consider any application for
33 mitigation.

34 (b) Any motor carrier who incurs a penalty as provided in this
35 section has a right to an administrative hearing under chapter 34.05
36 RCW to contest the violation or the penalty imposed, or both. In all
37 such hearings, the procedure and rules of evidence are as specified in
38 chapter 34.05 RCW except as otherwise provided in this chapter. Any

1 request for an administrative hearing must be made in writing and must
2 be received by the state patrol within twenty days after the later of
3 (i) receipt of the notice imposing the penalty, or (ii) disposition of
4 a request for mitigation, or the right to a hearing is waived.

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

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