

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6461

57th Legislature
2002 Regular Session

Passed by the Senate March 11, 2002
YEAS 46 NAYS 0

President of the Senate

Passed by the House March 8, 2002
YEAS 96 NAYS 0

**Speaker of the
House of Representatives**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6461** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

Approved

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6461

AS AMENDED BY THE HOUSE

Passed Legislature - 2002 Regular Session

State of Washington 57th Legislature

2002 Regular Session

By Senate Committee on Transportation (originally sponsored by Senators Gardner, Benton, Haugen, Horn, Jacobsen, Costa, Oke and Winsley)

READ FIRST TIME 01/30/2002.

1 AN ACT Relating to positive drug or alcohol test results of
2 commercial motor vehicle operators; amending RCW 46.25.090, 46.25.100,
3 and 46.25.120; adding new sections to chapter 46.25 RCW; and
4 prescribing penalties.

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 All medical review officers or breath alcohol technicians hired by
9 or under contract to a motor carrier or employer who is required to
10 have a testing program under 49 C.F.R. 382 or to a consortium the
11 carrier belongs to, as defined in 49 C.F.R. 382.17, shall report the
12 finding of a commercial driver's confirmed positive drug or alcohol
13 test to the department of licensing on a form provided by the
14 department. Motor carriers, employers, or consortiums shall make it a
15 written condition of their contract or agreement with a medical review
16 officer or breath alcohol technician, regardless of the state where the
17 medical review officer or breath alcohol technician is located, that
18 the medical review officer or breath alcohol technician is required to
19 report all Washington state licensed drivers who have a confirmed

1 positive drug or alcohol test to the department of licensing within
2 three business days of the confirmed test. Failure to obtain this
3 contractual condition or agreement with the medical review officer or
4 breath alcohol technician by the motor carrier, employer, or consortium
5 will result in an administrative fine as provided in RCW 81.04.405.
6 Substances obtained for testing may not be used for any purpose other
7 than drug or alcohol testing under 49 C.F.R. 382.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.25 RCW
9 to read as follows:

10 (1) When the department of licensing receives a report from a
11 medical review officer or breath alcohol technician that the holder of
12 a commercial driver's license has a confirmed positive drug or alcohol
13 test, either as part of the testing program required by 49 C.F.R. 382
14 or as part of a preemployment drug test, the department shall
15 disqualify the driver from driving a commercial motor vehicle under RCW
16 46.25.090(7) subject to a hearing as provided in this section. The
17 department shall notify the person in writing of the disqualification
18 by first class mail. The notice must explain the procedure for the
19 person to request a hearing.

20 (2) A person disqualified from driving a commercial motor vehicle
21 for having a confirmed positive drug or alcohol test may request a
22 hearing to challenge the disqualification within twenty days from the
23 date notice is given. If the request for a hearing is mailed, it must
24 be postmarked within twenty days after the department has given notice
25 of the disqualification.

26 (3) The hearing must be conducted in the county of the person's
27 residence, except that the department may conduct all or part of the
28 hearing by telephone or other electronic means.

29 (4) For the purposes of this section, the hearing must be limited
30 to the following issues: (a) Whether the driver is the person who took
31 the drug or alcohol test; (b) whether the motor carrier, employer, or
32 consortium has a program that meets the federal requirements under 49
33 C.F.R. 382; and (c) whether the medical review officer or breath
34 alcohol technician making the report accurately followed the protocols
35 for testing established to certify the results. Evidence may be
36 presented to demonstrate that the test results are a false positive.
37 For the purpose of a hearing under this section, a copy of the positive
38 test result with a declaration by the tester or medical review officer

1 or breath alcohol technician stating the accuracy of the laboratory
2 protocols followed to arrive at the test result is prima facie evidence
3 of a confirmed positive drug or alcohol test result. After the
4 hearing, the department shall order the disqualification of the person
5 either be rescinded or sustained.

6 (5) If the person does not request a hearing within the twenty-day
7 time limit, or if the person fails to appear at a hearing, the person
8 has waived the right to a hearing and the department shall sustain the
9 disqualification.

10 (6) A decision by the department disqualifying a person from
11 driving a commercial motor vehicle is stayed and does not take effect
12 while a formal hearing is pending under this section or during the
13 pendency of a subsequent appeal to superior court so long as there is
14 no conviction for a moving violation or no finding that the person has
15 committed a traffic infraction that is a moving violation and the
16 department receives no further report of a confirmed positive drug or
17 alcohol test during the pendency of the hearing and appeal. If the
18 disqualification is sustained after the hearing, the person who is
19 disqualified may file a petition in the superior court of the county of
20 his or her residence to review the final order of disqualification by
21 the department in the manner provided in RCW 46.20.334.

22 (7) The department of licensing may adopt rules specifying further
23 requirements for requesting a hearing under this section.

24 (8) The department of licensing is not civilly liable for damage
25 resulting from disqualifying a driver based on a confirmed positive
26 drug or alcohol test result as required by this section or for damage
27 resulting from release of this information that occurs in the normal
28 course of business.

29 **Sec. 3.** RCW 46.25.090 and 1996 c 30 s 3 are each amended to read
30 as follows:

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

36 (a) Driving a commercial motor vehicle under the influence of
37 alcohol or any drug;

1 (b) Driving a commercial motor vehicle while the alcohol
2 concentration in the person's system is 0.04 or more as determined by
3 any testing methods approved by law in this state or any other state or
4 jurisdiction;

5 (c) Leaving the scene of an accident involving a commercial motor
6 vehicle driven by the person;

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

8 (e) Refusing to submit to a test to determine the driver's alcohol
9 concentration while driving a motor vehicle.

10 If any of the violations set forth in this subsection occurred
11 while transporting a hazardous material required to be identified by a
12 placard, the person is disqualified for a period of not less than three
13 years.

14 (2) A person is disqualified for life if it has been determined
15 that the person has committed or has been convicted of two or more
16 violations of any of the offenses specified in subsection (1) of this
17 section, or any combination of those offenses, arising from two or more
18 separate incidents. Only offenses committed after October 1, 1989, may
19 be considered in applying this subsection.

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

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

30 (5) A person is disqualified from driving a commercial motor
31 vehicle for a period of not less than sixty days if convicted of or
32 found to have committed two serious traffic violations, or one hundred
33 twenty days if convicted of or found to have committed three serious
34 traffic violations, committed in a commercial motor vehicle arising
35 from separate incidents occurring within a three-year period.

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

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

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

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

12 (d) Not less than one hundred eighty days nor more than two years
13 if the person is convicted of or is found to have committed a first
14 violation of an out-of-service order while transporting hazardous
15 materials required to be placarded under the Hazardous Materials
16 Transportation Act (46 U.S.C. Sec. 1801-1813), or while operating motor
17 vehicles designed to transport sixteen or more passengers, including
18 the driver. A person is disqualified for a period of not less than
19 three years nor more than five years if, during a ten-year period, the
20 person is convicted of or is found to have committed subsequent
21 violations of out-of-service orders, in separate incidents, while
22 transporting hazardous materials required to be placarded under the
23 Hazardous Materials Transportation Act, or while operating motor
24 vehicles designed to transport sixteen or more passengers, including
25 the driver.

26 (7) A person is disqualified from driving a commercial motor
27 vehicle if a report has been received by the department under section
28 2 of this act that the person has received a confirmed positive drug or
29 alcohol test either as part of the testing program required by 49
30 C.F.R. 382 or 49 C.F.R. 40 or as part of a preemployment drug test. A
31 disqualification under this subsection remains in effect until the
32 person undergoes a drug and alcohol assessment by an agency certified
33 by the department of social and health services and, if the person is
34 classified as an alcoholic, drug addict, alcohol abuser, or drug
35 abuser, until the person presents evidence of satisfactory
36 participation in or successful completion of a drug or alcohol
37 treatment program that has been certified by the department of social
38 and health services under chapter 70.96A RCW and until the person has
39 met the requirements of RCW 46.25.100. The agency making a drug and

1 alcohol assessment under this section shall forward a diagnostic
2 evaluation and treatment recommendation to the department of licensing
3 for use in determining the person's eligibility for driving a
4 commercial motor vehicle. Persons who are disqualified under this
5 subsection more than twice in a five-year period are disqualified for
6 life.

7 (8) Within ten days after suspending, revoking, or canceling a
8 commercial driver's license, the department shall update its records to
9 reflect that action. After suspending, revoking, or canceling a
10 nonresident commercial driver's privileges, the department shall notify
11 the licensing authority of the state that issued the commercial
12 driver's license.

13 **Sec. 4.** RCW 46.25.100 and 1989 c 178 s 12 are each amended to read
14 as follows:

15 When a person has been disqualified from operating a commercial
16 motor vehicle, the person is not entitled to have the commercial
17 driver's license restored until after the expiration of the appropriate
18 disqualification period required under RCW 46.25.090 or until the
19 department has received a drug and alcohol assessment and evidence is
20 presented of satisfactory participation in or completion of any
21 required drug or alcohol treatment program for ending the
22 disqualification under RCW 46.25.090(7). After expiration of the
23 appropriate period and upon payment of a requalification fee of twenty
24 dollars, or one hundred fifty dollars if the person has been
25 disqualified under RCW 46.25.090(7), the person may apply for a new,
26 duplicate, or renewal commercial driver's license as provided by law.
27 If the person has been disqualified for a period of one year or more,
28 the person shall demonstrate that he or she meets the commercial
29 driver's license qualification standards specified in RCW 46.25.060.

30 **Sec. 5.** RCW 46.25.120 and 1998 c 41 s 6 are each amended to read
31 as follows:

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

6 (3) The law enforcement officer requesting the test under
7 subsection (1) of this section shall warn the person requested to
8 submit to the test that a refusal to submit will result in that person
9 being disqualified from operating a commercial motor vehicle under RCW
10 46.25.090.

11 (4) If the person refuses testing, or submits to a test that
12 discloses an alcohol concentration of 0.04 or more, the law enforcement
13 officer shall submit a sworn report to the department certifying that
14 the test was requested pursuant to subsection (1) of this section and
15 that the person refused to submit to testing, or submitted to a test
16 that disclosed an alcohol concentration of 0.04 or more.

17 (5) Upon receipt of the sworn report of a law enforcement officer
18 under subsection (4) of this section, the department shall disqualify
19 the driver from driving a commercial motor vehicle under RCW 46.25.090,
20 subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The
21 hearing shall be conducted in the county of the arrest. For the
22 purposes of this section, the hearing shall cover the issues of whether
23 a law enforcement officer had reasonable grounds to believe the person
24 had been driving or was in actual physical control of a commercial
25 motor vehicle within this state while having alcohol in the person's
26 system, whether the person refused to submit to the test or tests upon
27 request of the officer after having been informed that the refusal
28 would result in the disqualification of the person from driving a
29 commercial motor vehicle, and, if the test was administered, whether
30 the results indicated an alcohol concentration of 0.04 percent or more.
31 The department shall order that the disqualification of the person
32 either be rescinded or sustained. Any decision by the department
33 disqualifying a person from driving a commercial motor vehicle is
34 stayed and does not take effect while a formal hearing is pending under
35 this section or during the pendency of a subsequent appeal to superior
36 court so long as there is no conviction for a moving violation or no
37 finding that the person has committed a traffic infraction that is a
38 moving violation during the pendency of the hearing and appeal. If the
39 disqualification of the person is sustained after the hearing, the

1 person who is disqualified may file a petition in the superior court of
2 the county of arrest to review the final order of disqualification by
3 the department in the manner provided in RCW 46.20.334.

4 (6) If a motor carrier or employer who is required to have a
5 testing program under 49 C.F.R. 382 knows that a commercial driver in
6 his or her employ has refused to submit to testing under this section
7 and has not been disqualified from driving a commercial motor vehicle,
8 the employer may notify law enforcement or his or her medical review
9 officer or breath alcohol technician that the driver has refused to
10 submit to the required testing.

11 (7) The hearing provisions of this section do not apply to those
12 persons disqualified from driving a commercial motor vehicle under RCW
13 46.25.090(7).

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