AN ACT Relating to positive drug or alcohol test results of commercial motor vehicle operators; amending RCW 46.25.010, 46.25.123, and 46.25.125; reenacting and amending RCW 46.25.090; and creating a new section.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to promote the safety of drivers and passengers on Washington roads and public transportation systems. To this end, Washington has established a reporting requirement for employers of commercial drivers who test positive for unlawful substances. The legislature recognizes that transit operators and their employers are an asset to the public transportation system and continuously strive to provide a safe and efficient mode of travel. In light of this, the legislature further intends that the inclusion of transit employers in the reporting requirements serve only to enhance the current efforts of these dedicated employers and employees as they continue to provide a safe public transportation system to the citizens of Washington.
Sec. 2.  RCW 46.25.010 and 1996 c 30 s 1 are each amended to read as follows:

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

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

(2) "Alcohol concentration" means:

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

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

(3) "Commercial driver's license" (CDL) means a license issued in accordance with the requirements of this chapter to an individual that authorizes the individual to drive a class of commercial motor vehicle.

(4) The "commercial driver's license information system" (CDLIS) is the information system established pursuant to the CMVSA to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial driver's instruction permit" means a permit issued under RCW 46.25.060(4).

(6) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:

(a) If the vehicle has a gross weight rating of 26,001 or more pounds;

(b) If the vehicle is designed to transport sixteen or more passengers, including the driver;

(c) If the vehicle is transporting hazardous materials and is required to be identified by a placard in accordance with 49 C.F.R. part 172, subpart F; or

(d) If the vehicle is a school bus as defined in RCW 46.04.521 regardless of weight or size.

(7) "Conviction" has the definition set forth in RCW 46.20.270.

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

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

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

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

(12) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the maximum loaded weight of a single or a combination or articulated vehicle, or the registered gross weight, where this value cannot be determined. The GVWR of a combination or articulated vehicle, commonly referred to as the "gross combined weight rating" or GCWR, is the GVWR of the power unit plus the GVWR of the towed unit or units.

(13) "Hazardous materials" has the same meaning found in Section 103 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.).

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

(15) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.

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

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

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

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

(17) "Serious traffic violation" means:
(a) Excessive speeding, defined as fifteen miles per hour or more in excess of the posted limit;
(b) Reckless driving, as defined under state or local law;
(c) A violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person; and
(d) Any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, that the department determines by rule to be serious.

"State" means a state of the United States and the District of Columbia.

"Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, training, and continuing education requirements of 49 C.F.R. 40.281.

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

"United States" means the fifty states and the District of Columbia.

"Verified positive drug test" means a drug test result or validity testing result from a laboratory certified under the authority of the federal department of health and human services that:
(a) Indicates a drug concentration at or above the cutoff concentration established under 49 C.F.R. 40.87; and
(b) Has undergone review and final determination by a medical review officer.

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

Sec. 3. RCW 46.25.123 and 2002 c 272 s 1 are each amended to read as follows:

(1) All medical review officers or breath alcohol technicians hired by or under contract to a motor carrier or employer who employs drivers...
who operate commercial motor vehicles and who is required to have a testing program conducted under the procedures established by 49 C.F.R. ([382]) 40 or to a consortium the carrier or employer belongs to, as defined in 49 C.F.R. ([382.17]) 40.3, shall report the finding of a commercial motor vehicle driver's ([confirmed]) verified positive drug test or positive alcohol confirmation test to the department of licensing on a form provided by the department.

(2) A motor carrier or employer who employs drivers who operate commercial motor vehicles and who is required to have a testing program conducted under the procedures established by 49 C.F.R. 40, or the consortium the carrier or employer belongs to, must report a refusal by a commercial motor vehicle driver to take a drug or alcohol test, under circumstances that constitute the refusal of a test under 49 C.F.R. 40 and where such refusal has not been reported by a medical review officer or breath alcohol technician, to the department of licensing on a form provided by the department.

(3) Motor carriers, employers, or consortiums shall make it a written condition of their contract or agreement with a medical review officer or breath alcohol technician, regardless of the state where the medical review officer or breath alcohol technician is located, that the medical review officer or breath alcohol technician is required to report all Washington state licensed drivers who have a ([confirmed]) verified positive drug test or positive alcohol confirmation test to the department of licensing within three business days of the ([confirmed test]) verification or confirmation. Failure to obtain this contractual condition or agreement with the medical review officer or breath alcohol technician by the motor carrier, employer, or consortium, or failure to report a refusal as required by subsection (2) of this section, will result in an administrative fine as provided in RCW 46.32.100 or 81.04.405.

(4) Substances obtained for testing may not be used for any purpose other than drug or alcohol testing under 49 C.F.R. ([382]) 40.

Sec. 4. RCW 46.25.125 and 2002 c 272 s 2 are each amended to read as follows:

(1) When the department of licensing receives a report from a medical review officer ([or]) or breath alcohol technician, employer, contractor, or consortium that ([the holder of a commercial driver's
a driver has a ((confirmed)) verified positive drug test or positive alcohol confirmation test, ((either)) as part of the testing program ((required by)) conducted under 49 C.F.R. ((382 or as part of a preemployment drug test)) 40, the department shall disqualify the driver from driving a commercial motor vehicle under RCW 46.25.090(7) subject to a hearing as provided in this section. The department shall notify the person in writing of the disqualification by first class mail. The notice must explain the procedure for the person to request a hearing.

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

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

(4) For the purposes of this section, or for the purpose of a hearing de novo in an appeal to superior court, the hearing must be limited to the following issues: (a) Whether the driver is the person who ((took the drug or alcohol test)) is the subject of the report; (b) whether the motor carrier, employer, or consortium has a program that ((meets)) is subject to the federal requirements under 49 C.F.R. ((382)) 40; and (c) whether the medical review officer or breath alcohol technician making the report accurately followed the protocols ((for testing)) established to ((certify)) verify or confirm the results, or if the driver refused a test, whether the circumstances constitute the refusal of a test under 49 C.F.R. 40. Evidence may be presented to demonstrate that the test results are a false positive. For the purpose of a hearing under this section, a copy of ((the)) a positive test result with a declaration by the tester or medical review officer or breath alcohol technician stating the accuracy of the laboratory protocols followed to arrive at the test result is prima facie evidence:

(i) Of a ((confirmed)) verified positive drug test or positive alcohol confirmation test result.
(ii) That the motor carrier, employer, or consortium has a program that is subject to the federal requirements under 49 C.F.R. 40; and

(iii) That the medical review officer or breath alcohol technician making the report accurately followed the protocols for testing established to verify or confirm the results.

After the hearing, the department shall order the disqualification of the person either be rescinded or sustained.

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

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

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

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

Sec. 5. RCW 46.25.090 and 2002 c 272 s 3 and 2002 c 193 s 1 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) A person is disqualified from driving a commercial motor
vehicle if a report has been received by the department under RCW
46.25.125 that the person has received a (confirmed) verified
positive drug test or positive alcohol confirmation test (either) as
part of the testing program (required by 49 C.F.R. 382 or) conducted
under 49 C.F.R. 40 (or as part of a preemployment drug test). A
disqualification under this subsection remains in effect until the
person undergoes a drug and alcohol assessment by ((an agency certified

p. 9

SSB 5431
by the department of social and health services and, if the person is
classified as an alcoholic, drug addict, alcohol abuser, or drug
abuser, until) a substance abuse professional meeting the requirements
of 49 C.F.R. 40, and the person presents evidence of satisfactory
participation in or successful completion of a drug or alcohol
treatment and/or education program ((that has been certified by the
department of social and health services under chapter 70.96A RCW)) as
recommended by the substance abuse professional, and until the person
has met the requirements of RCW 46.25.100. The ((agency making a drug
and alcohol assessment under this section)) substance abuse
professional shall forward a diagnostic evaluation and treatment
recommendation to the department of licensing for use in determining
the person's eligibility for driving a commercial motor vehicle.
Persons who are disqualified under this subsection more than twice in
a five-year period are disqualified for life.

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

(i) For drivers who are not required to always stop, failing to
slow down and check that the tracks are clear of an approaching train;
(ii) For drivers who are not required to always stop, failing to
stop before reaching the crossing, if the tracks are not clear;
(iii) For drivers who are always required to stop, failing to stop
before driving onto the crossing;
(iv) For all drivers, failing to have sufficient space to drive
completely through the crossing without stopping;
(v) For all drivers, failing to obey a traffic control device or
the directions of an enforcement officer at the crossing;
(vi) For all drivers, failing to negotiate a crossing because of
insufficient undercarriage clearance.

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

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

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

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