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**SUBSTITUTE SENATE BILL 5694**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senate Transportation (originally sponsored by Senators King and Saldaña)

AN ACT Relating to commercial beekeeper drivers; amending RCW 46.25.010, 46.25.055, and 46.25.075; and providing an effective date.

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

**Sec.**  RCW 46.25.010 and 2018 c 49 s 4 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 to an individual under chapter 46.20 RCW that has been endorsed in accordance with the requirements of this chapter to authorize 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 49 U.S.C. Sec. 31309 to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial learner's permit" (CLP) means a permit issued under RCW 46.25.052 for the purposes of behind-the-wheel training.

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

(a) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of any towed unit or units with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds or more), whichever is greater; or

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

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

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

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

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

(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. Sec. 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 vehicle. 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. If the GVWR of any unit cannot be determined, the actual gross weight will be used. If a vehicle with a GVWR of less than 11,794 kilograms (26,001 pounds or less) has been structurally modified to carry a heavier load, then the actual gross weight capacity of the modified vehicle, as determined by RCW 46.44.041 and 46.44.042, will be used as the GVWR.

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

(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)(a) "Nondomiciled CLP or CDL" means a permit or license, respectively, issued under RCW 46.25.054 to a person who meets one of the following criteria:

(i) Is domiciled in a foreign country as provided in 49 C.F.R. Sec. 383.23(b)(1) as it existed on October 1, 2017, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section; or

(ii) Is domiciled in another state as provided in 49 C.F.R. Sec. 383.23(b)(2) as it existed on October 1, 2017, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section.

(b) The definition in this subsection (15) applies exclusively to the use of the term in this chapter and is not to be applied in any other chapter of the Revised Code of Washington.

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

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

(a) Has been conducted by a breath alcohol technician under 49 C.F.R. Part 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. Part 40, will be considered equivalent to a report of a positive alcohol confirmation test for the purposes of this chapter.

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

(19) "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) Driving while using a personal electronic device, defined as a violation of RCW 46.61.672, which includes in the activities it prohibits driving while holding a personal electronic device in either or both hands and using a hand or finger for texting, or an equivalent administrative rule or local law, ordinance, rule, or resolution;

(d) 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;

(e) Driving a commercial motor vehicle without obtaining a commercial driver's license;

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

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

(h) 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.

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

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

(22) "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than one hundred nineteen gallons and an aggregate rated capacity of one thousand gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of one thousand gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.

(23) "Type of driving" means one of the following:

(a) "Nonexcepted interstate," which means the CDL or CLP holder or applicant operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 C.F.R. Part 391 as it existed on April 30, 2019, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on April 30, 2019, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(b) "Excepted interstate," which means the CDL or CLP holder or applicant operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 C.F.R. Secs. 390.3(f), 391.2, 391.68, or 398.3, as they existed on April 30, 2019, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, from all or parts of the qualification requirements of 49 C.F.R. Part 391 as it existed on April 30, 2019, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and except for commercial beekeeper drivers excepted from medical certification requirements under 49 C.F.R. Sec. 390.3(f) and RCW 46.25.055(2), and is required to obtain a medical examiner's certificate in accordance with procedures provided in 49 C.F.R. Sec. 391.45 as it existed on April 30, 2019, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(c) "Nonexcepted intrastate," which means:

(i) A commercial beekeeper drivers excepted from medical certification requirements under 49 C.F.R. Sec. 390.3 and RCW 46.25.055(2); or

(ii) The CDL or CLP holder or applicant operates only in intrastate commerce and is required to obtain a medical examiner's certificate in accordance with procedures provided in 49 C.F.R. Sec. 391.45 as it existed on April 30, 2019, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section; or

(d) "Excepted intrastate," which means the CDL or CLP holder wishes to maintain a CDL or CLP but not operate a commercial motor vehicle without changing his or her self-certification type.

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

(25) "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. Sec. 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. Part 40, will be considered equivalent to a report of a verified positive drug test for the purposes of this chapter.

(26) "Commercial beekeeper driver" means a driver who is operating a commercial motor vehicle controlled and operated by a beekeeper engaged in the seasonal transportation of bees.

**Sec.**  RCW 46.25.055 and 2018 c 49 s 1 are each amended to read as follows:

(1) Except as provided in 49 C.F.R. Sec. 391.67 as it existed on April 30, 2019, or subsection (2) of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, a person may not drive a commercial motor vehicle unless he or she is physically qualified to do so and is medically examined and certified in accordance with procedures provided in 49 C.F.R. Sec. 391.43 as it existed on April 30, 2019, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section.

(2) A commercial beekeeper driver, as defined in RCW 46.25.010, and as authorized under 49 C.F.R. Sec. 390.3, is exempt from the medical examination and certification requirements of subsection (1) of this section.

**Sec.**  RCW 46.25.075 and 2018 c 49 s 3 are each amended to read as follows:

The medical certification requirements of this section do not apply to commercial beekeeper drivers certifying under subsection (1)(b) or (d) of this section.

(1) Any person applying for a CDL or CLP must certify that he or she is or expects to be engaged in one of the following types of driving:

(a) Nonexcepted interstate;

(b) Excepted interstate;

(c) Nonexcepted intrastate; or

(d) Excepted intrastate.

(2) A CDL or CLP applicant or holder who certifies under subsection (1)(a), (b), or (c) of this section that he or she is or expects to be engaged in nonexcepted interstate, excepted interstate, or nonexcepted intrastate commerce must provide a copy of a medical examiner's certificate prepared by a medical examiner, as defined in 49 C.F.R. Sec. 390.5 as it existed on April 30, 2019, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section. A CDL or CLP holder who certifies under subsection (1)(a), (b), or (c) of this section must provide a copy of each subsequently issued medical examiner's certificate.

(3) For each operator of a commercial motor vehicle required to have a CDL or CLP, the department must meet the following requirements:

(a)(i) The driver's self-certification of type of driving under subsection (1) of this section must be maintained on the driver's record and the CDLIS driver record;

(ii) The copy of a medical examiner's certificate, when provided under subsection (2) of this section, must be retained for three years beyond the date the certificate was issued; and

(iii) When a medical examiner's certificate is provided under subsection (2) of this section, the information required under 49 C.F.R. Sec. 383.73 as it existed on April 30, 2019, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section must be posted to the CDLIS driver record within ten calendar days from the date provided. The indicator of medical certification status, such as "certified" or "not-certified," must be maintained on the driver's record.

(b) Within ten calendar days of the driver's medical certification status expiring or a medical variance expiring or being rescinded, the medical certification status of the driver must be updated to "not-certified."

(c) Within ten calendar days of receiving information from the federal motor carrier safety administration or the department regarding issuance or renewal of a medical variance for a driver, the department must update the CDLIS driver record to include the medical variance information.

(4) Upon receiving an electronic copy of the medical examiner's certificate from the federal motor carrier safety administration, the department must post a medical qualification status of "certified" on the CDLIS driver record for the driver.

(5)(a) If a driver's medical certification or medical variance expires, or the federal motor carrier safety administration or issuing medical examiner notifies the department that a medical variance was removed or rescinded, the department must:

(i) Notify the driver of his or her "not-certified" medical certification status and that the privilege of operating a commercial motor vehicle will be removed from the CDL or CLP unless the driver provides a current medical certificate or medical variance, or changes his or her self-certification to driving in excepted intrastate commerce; and

(ii) Initiate procedures for downgrading the CDL or CLP. The CDL or CLP downgrade must be completed and recorded within sixty days of the driver's medical certification status becoming "not-certified" to operate a commercial motor vehicle.

(b) If a driver fails to provide the department with the certification required in subsection (1) of this section, or a current medical examiner's certificate if the driver self-certifies under subsection (1)(a), (b), or (c) of this section that he or she is operating in nonexcepted interstate, excepted interstate, or nonexcepted intrastate commerce as required in subsection (2) of this section, the department must mark the CDLIS driver record as "not-certified" and initiate a CDL or CLP downgrade in accordance with (a)(ii) of this subsection.

(c) A driver whose CDL or CLP has been downgraded under this subsection may restore the CDL or CLP privilege by providing the necessary certifications or medical variance information to the department.

NEW SECTION. **Sec.**  This act takes effect October 1, 2019.

**--- END ---**