

2 **SSB 6461** - H COMM AMD **ADOPTED 3-8-02**
3 By Committee on Transportation

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5 Strike everything after the enacting clause and insert the
6 following:

7 **"NEW SECTION.** **Sec. 1.** A new section is added to chapter 46.25 RCW
8 to read as follows:

9 All medical review officers or breath alcohol technicians hired by
10 or under contract to a motor carrier or employer who is required to
11 have a testing program under 49 C.F.R. 382 or to a consortium the
12 carrier belongs to, as defined in 49 C.F.R. 382.17, shall report the
13 finding of a commercial driver's confirmed positive drug or alcohol
14 test to the department of licensing on a form provided by the
15 department. Motor carriers, employers, or consortiums shall make it a
16 written condition of their contract or agreement with a medical review
17 officer or breath alcohol technician, regardless of the state where the
18 medical review officer or breath alcohol technician is located, that
19 the medical review officer or breath alcohol technician is required to
20 report all Washington state licensed drivers who have a confirmed
21 positive drug or alcohol test to the department of licensing within
22 three business days of the confirmed test. Failure to obtain this
23 contractual condition or agreement with the medical review officer or
24 breath alcohol technician by the motor carrier, employer, or consortium
25 will result in an administrative fine as provided in RCW 81.04.405.
26 Substances obtained for testing may not be used for any purpose other
27 than drug or alcohol testing under 49 C.F.R. 382.

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

30 (1) When the department of licensing receives a report from a
31 medical review officer or breath alcohol technician that the holder of
32 a commercial driver's license has a confirmed positive drug or alcohol
33 test, either as part of the testing program required by 49 C.F.R. 382
34 or as part of a preemployment drug test, the department shall
35 disqualify the driver from driving a commercial motor vehicle under RCW

1 46.25.090(7) subject to a hearing as provided in this section. The
2 department shall notify the person in writing of the disqualification
3 by first class mail. The notice must explain the procedure for the
4 person to request a hearing.

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

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

14 (4) For the purposes of this section, the hearing must be limited
15 to the following issues: (a) Whether the driver is the person who took
16 the drug or alcohol test; (b) whether the motor carrier, employer, or
17 consortium has a program that meets the federal requirements under 49
18 C.F.R. 382; and (c) whether the medical review officer or breath
19 alcohol technician making the report accurately followed the protocols
20 for testing established to certify the results. Evidence may be
21 presented to demonstrate that the test results are a false positive.
22 For the purpose of a hearing under this section, a copy of the positive
23 test result with a declaration by the tester or medical review officer
24 or breath alcohol technician stating the accuracy of the laboratory
25 protocols followed to arrive at the test result is *prima facie* evidence
26 of a confirmed positive drug or alcohol test result. After the
27 hearing, the department shall order the disqualification of the person
28 either be rescinded or sustained.

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

33 (6) A decision by the department disqualifying a person from
34 driving a commercial motor vehicle is stayed and does not take effect
35 while a formal hearing is pending under this section or during the
36 pendency of a subsequent appeal to superior court so long as there is
37 no conviction for a moving violation or no finding that the person has
38 committed a traffic infraction that is a moving violation and the
39 department receives no further report of a confirmed positive drug or

1 alcohol test during the pendency of the hearing and appeal. If the
2 disqualification is sustained after the hearing, the person who is
3 disqualified may file a petition in the superior court of the county of
4 his or her residence to review the final order of disqualification by
5 the department in the manner provided in RCW 46.20.334.

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

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

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

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

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

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

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

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

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

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

35 (2) A person is disqualified for life if it has been determined
36 that the person has committed or has been convicted of two or more
37 violations of any of the offenses specified in subsection (1) of this
38 section, or any combination of those offenses, arising from two or more

1 separate incidents. Only offenses committed after October 1, 1989, may
2 be considered in applying this subsection.

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

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

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

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

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

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

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

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

1 person is convicted of or is found to have committed subsequent
2 violations of out-of-service orders, in separate incidents, while
3 transporting hazardous materials required to be placarded under the
4 Hazardous Materials Transportation Act, or while operating motor
5 vehicles designed to transport sixteen or more passengers, including
6 the driver.

7 (7) A person is disqualified from driving a commercial motor
8 vehicle if a report has been received by the department under section
9 2 of this act that the person has received a confirmed positive drug or
10 alcohol test either as part of the testing program required by 49
11 C.F.R. 382 or 49 C.F.R. 40 or as part of a preemployment drug test. A
12 disqualification under this subsection remains in effect until the
13 person undergoes a drug and alcohol assessment by an agency certified
14 by the department of social and health services and, if the person is
15 classified as an alcoholic, drug addict, alcohol abuser, or drug
16 abuser, until the person presents evidence of satisfactory
17 participation in or successful completion of a drug or alcohol
18 treatment program that has been certified by the department of social
19 and health services under chapter 70.96A RCW and until the person has
20 met the requirements of RCW 46.25.100. The agency making a drug and
21 alcohol assessment under this section shall forward a diagnostic
22 evaluation and treatment recommendation to the department of licensing
23 for use in determining the person's eligibility for driving a
24 commercial motor vehicle. Persons who are disqualified under this
25 subsection more than twice in a five-year period are disqualified for
26 life.

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

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

35 When a person has been disqualified from operating a commercial
36 motor vehicle, the person is not entitled to have the commercial
37 driver's license restored until after the expiration of the appropriate
38 disqualification period required under RCW 46.25.090 or until the

1 department has received a drug and alcohol assessment and evidence is
2 presented of satisfactory participation in or completion of any
3 required drug or alcohol treatment program for ending the
4 disqualification under RCW 46.25.090(7). After expiration of the
5 appropriate period and upon payment of a requalification fee of twenty
6 dollars, or one hundred fifty dollars if the person has been
7 disqualified under RCW 46.25.090(7), the person may apply for a new,
8 duplicate, or renewal commercial driver's license as provided by law.
9 If the person has been disqualified for a period of one year or more,
10 the person shall demonstrate that he or she meets the commercial
11 driver's license qualification standards specified in RCW 46.25.060.

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

14 (1) A person who drives a commercial motor vehicle within this
15 state is deemed to have given consent, subject to RCW 46.61.506, to
16 take a test or tests of that person's blood or breath for the purpose
17 of determining that person's alcohol concentration or the presence of
18 other drugs.

19 (2) A test or tests may be administered at the direction of a law
20 enforcement officer, who after stopping or detaining the commercial
21 motor vehicle driver, has probable cause to believe that driver was
22 driving a commercial motor vehicle while having alcohol in his or her
23 system.

24 (3) The law enforcement officer requesting the test under
25 subsection (1) of this section shall warn the person requested to
26 submit to the test that a refusal to submit will result in that person
27 being disqualified from operating a commercial motor vehicle under RCW
28 46.25.090.

29 (4) If the person refuses testing, or submits to a test that
30 discloses an alcohol concentration of 0.04 or more, the law enforcement
31 officer shall submit a sworn report to the department certifying that
32 the test was requested pursuant to subsection (1) of this section and
33 that the person refused to submit to testing, or submitted to a test
34 that disclosed an alcohol concentration of 0.04 or more.

35 (5) Upon receipt of the sworn report of a law enforcement officer
36 under subsection (4) of this section, the department shall disqualify
37 the driver from driving a commercial motor vehicle under RCW 46.25.090,
38 subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The

1 hearing shall be conducted in the county of the arrest. For the
2 purposes of this section, the hearing shall cover the issues of whether
3 a law enforcement officer had reasonable grounds to believe the person
4 had been driving or was in actual physical control of a commercial
5 motor vehicle within this state while having alcohol in the person's
6 system, whether the person refused to submit to the test or tests upon
7 request of the officer after having been informed that the refusal
8 would result in the disqualification of the person from driving a
9 commercial motor vehicle, and, if the test was administered, whether
10 the results indicated an alcohol concentration of 0.04 percent or more.
11 The department shall order that the disqualification of the person
12 either be rescinded or sustained. Any decision by the department
13 disqualifying a person from driving a commercial motor vehicle is
14 stayed and does not take effect while a formal hearing is pending under
15 this section or during the pendency of a subsequent appeal to superior
16 court so long as there is no conviction for a moving violation or no
17 finding that the person has committed a traffic infraction that is a
18 moving violation during the pendency of the hearing and appeal. If the
19 disqualification of the person is sustained after the hearing, the
20 person who is disqualified may file a petition in the superior court of
21 the county of arrest to review the final order of disqualification by
22 the department in the manner provided in RCW 46.20.334.

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

30 (7) The hearing provisions of this section do not apply to those
31 persons disqualified from driving a commercial motor vehicle under RCW
32 46.25.090(7)."

EFFECT: Permits the employer of a driver who has refused to submit to a required drug or alcohol test to notify either law enforcement or his or her medical review officer or breath alcohol technician.

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