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HOUSE BILL 1179

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State of Washington

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2001 Regular Session

By Representatives Ericksen, Lovick, G. Chandler and O'Brien

Read first time 01/19/2001. Referred to Committee on Transportation.

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. For the purpose of a  
36 hearing under this section, a copy of the positive test result with a  
37 declaration by the tester or medical review officer or breath alcohol  
38 technician stating the accuracy of the laboratory protocols followed to

1 arrive at the test result is prima facie evidence of a confirmed  
2 positive drug or alcohol test result. After the hearing, the  
3 department shall order the disqualification of the person either be  
4 rescinded or sustained.

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

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

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

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

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

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

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

37 (b) Driving a commercial motor vehicle while the alcohol  
38 concentration in the person's system is 0.04 or more as determined by

1 any testing methods approved by law in this state or any other state or  
2 jurisdiction;

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (7) A person is disqualified from driving a commercial motor  
24 vehicle if a report has been received by the department under section  
25 2 of this act that the person has received a confirmed positive drug or  
26 alcohol test either as part of the testing program required by 49  
27 C.F.R. 382 or 49 C.F.R. 40 or as part of a preemployment drug test. A  
28 disqualification under this subsection remains in effect until the  
29 person undergoes a drug and alcohol assessment by an agency certified  
30 by the department of social and health services and, if the person is  
31 classified as an alcoholic, drug addict, alcohol abuser, or drug  
32 abuser, until the person presents evidence of satisfactory  
33 participation in or successful completion of a drug or alcohol  
34 treatment program that has been certified by the department of social  
35 and health services under chapter 70.96A RCW and until the person has  
36 met the requirements of RCW 46.25.100. The agency making a drug and  
37 alcohol assessment under this section shall forward a diagnostic  
38 evaluation and treatment recommendation to the department of licensing  
39 for use in determining the person's eligibility for driving a

1 commercial motor vehicle. Persons who are disqualified under this  
2 subsection more than twice in a five-year period are disqualified for  
3 life.

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

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

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

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

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

34 (2) A test or tests may be administered at the direction of a law  
35 enforcement officer, who after stopping or detaining the commercial  
36 motor vehicle driver, has probable cause to believe that driver was

1 driving a commercial motor vehicle while having alcohol in his or her  
2 system.

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

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

14 (5) Upon receipt of the sworn report of a law enforcement officer  
15 under subsection (4) of this section, the department shall disqualify  
16 the driver from driving a commercial motor vehicle under RCW 46.25.090,  
17 subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The  
18 hearing shall be conducted in the county of the arrest. For the  
19 purposes of this section, the hearing shall cover the issues of whether  
20 a law enforcement officer had reasonable grounds to believe the person  
21 had been driving or was in actual physical control of a commercial  
22 motor vehicle within this state while having alcohol in the person's  
23 system, whether the person refused to submit to the test or tests upon  
24 request of the officer after having been informed that the refusal  
25 would result in the disqualification of the person from driving a  
26 commercial motor vehicle, and, if the test was administered, whether  
27 the results indicated an alcohol concentration of 0.04 percent or more.  
28 The department shall order that the disqualification of the person  
29 either be rescinded or sustained. Any decision by the department  
30 disqualifying a person from driving a commercial motor vehicle is  
31 stayed and does not take effect while a formal hearing is pending under  
32 this section or during the pendency of a subsequent appeal to superior  
33 court so long as there is no conviction for a moving violation or no  
34 finding that the person has committed a traffic infraction that is a  
35 moving violation during the pendency of the hearing and appeal. If the  
36 disqualification of the person is sustained after the hearing, the  
37 person who is disqualified may file a petition in the superior court of  
38 the county of arrest to review the final order of disqualification by  
39 the department in the manner provided in RCW 46.20.334.

1       (6) The hearing provisions of this section do not apply to those  
2 persons disqualified from driving a commercial motor vehicle under RCW  
3 46.25.090(7).

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