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HOUSE BILL 1679

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State of Washington

58th Legislature

2003 Regular Session

By Representatives Wallace, Morrell, Rockefeller and Hankins; by request of Department of Licensing

Read first time 02/04/2003. Referred to Committee on Transportation.

1 AN ACT Relating to positive drug or alcohol test results of  
2 commercial motor vehicle operators; amending RCW 46.25.010, 46.25.123,  
3 and 46.25.125; and reenacting and amending RCW 46.25.090.

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

5 **Sec. 1.** RCW 46.25.010 and 1996 c 30 s 1 are each amended to read  
6 as follows:

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

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

12 (2) "Alcohol concentration" means:

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

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

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

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

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

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

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

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

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

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

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

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

21 (9) "Drive" means to drive, operate, or be in physical control of  
22 a motor vehicle in any place open to the general public for purposes of  
23 vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and  
24 46.25.120, "drive" includes operation or physical control of a motor  
25 vehicle anywhere in the state.

26 (10) "Drugs" are those substances as defined by RCW 69.04.009,  
27 including, but not limited to, those substances defined by 49 C.F.R.  
28 40.3.

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

33 (12) "Gross vehicle weight rating" (GVWR) means the value specified  
34 by the manufacturer as the maximum loaded weight of a single or a  
35 combination or articulated vehicle, or the registered gross weight,  
36 where this value cannot be determined. The GVWR of a combination or  
37 articulated vehicle, commonly referred to as the "gross combined weight

1 rating" or GCWR, is the GVWR of the power unit plus the GVWR of the  
2 towed unit or units.

3 (13) "Hazardous materials" has the same meaning found in Section  
4 103 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801  
5 et seq.).

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

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

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

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

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

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

22 (17) "Serious traffic violation" means:

23 (a) Excessive speeding, defined as fifteen miles per hour or more  
24 in excess of the posted limit;

25 (b) Reckless driving, as defined under state or local law;

26 (c) A violation of a state or local law relating to motor vehicle  
27 traffic control, other than a parking violation, arising in connection  
28 with an accident or collision resulting in death to any person; and

29 (d) Any other violation of a state or local law relating to motor  
30 vehicle traffic control, other than a parking violation, that the  
31 department determines by rule to be serious.

32 ((+17)) (18) "State" means a state of the United States and the  
33 District of Columbia.

34 ((+18)) (19) "Substance abuse professional" means an alcohol and  
35 drug specialist meeting the credentials, knowledge, training, and  
36 continuing education requirements of 49 C.F.R. 40.281.

37 (20) "Tank vehicle" means a vehicle that is designed to transport  
38 a liquid or gaseous material within a tank that is either permanently

1 or temporarily attached to the vehicle or the chassis. Tank vehicles  
2 include, but are not limited to cargo tanks and portable tanks.  
3 However, this definition does not include portable tanks having a rated  
4 capacity under one thousand gallons.

5 ~~((19))~~ (21) "United States" means the fifty states and the  
6 District of Columbia.

7 (22) "Verified positive drug test" means a drug test result or  
8 validity testing result from a laboratory certified under the authority  
9 of the federal department of health and human services that:

10 (a) Indicates a drug concentration at or above the cutoff  
11 concentration established under 49 C.F.R. 40.87; and

12 (b) Has undergone review and final determination by a medical  
13 review officer.

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

18 **Sec. 2.** RCW 46.25.123 and 2002 c 272 s 1 are each amended to read  
19 as follows:

20 (1) All medical review officers or breath alcohol technicians hired  
21 by or under contract to a motor carrier or employer who employs drivers  
22 who operate commercial motor vehicles and who is required to have a  
23 testing program conducted under the procedures established by 49 C.F.R.  
24 ~~((382))~~ 40 or to a consortium the carrier or employer belongs to, as  
25 defined in 49 C.F.R. ~~((382.17))~~ 40.3, shall report the finding of a  
26 commercial motor vehicle driver's ~~((confirmed))~~ verified positive drug  
27 test or positive alcohol confirmation test to the department of  
28 licensing on a form provided by the department.

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

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

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

17       **Sec. 3.** RCW 46.25.125 and 2002 c 272 s 2 are each amended to read  
18 as follows:

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

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

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

4 (4) For the purposes of this section, or for the purpose of a  
5 hearing de novo in an appeal to superior court, the hearing must be  
6 limited to the following issues: (a) Whether the driver is the person  
7 who ~~((took the drug or alcohol test))~~ is the subject of the report; (b)  
8 whether the motor carrier, employer, or consortium has a program that  
9 ~~((meets))~~ is subject to the federal requirements under 49 C.F.R.  
10 ~~((382))~~ 40; and (c) whether the medical review officer or breath  
11 alcohol technician making the report accurately followed the protocols  
12 ~~((for testing))~~ established to ~~((certify))~~ verify or confirm the  
13 results, or if the driver refused a test, whether the circumstances  
14 constitute the refusal of a test under 49 C.F.R. 40. Evidence may be  
15 presented to demonstrate that the test results are a false positive.  
16 For the purpose of a hearing under this section, a copy of ~~((the))~~ a  
17 positive test result with a declaration by the tester or medical review  
18 officer or breath alcohol technician stating the accuracy of the  
19 laboratory protocols followed to arrive at the test result is prima  
20 facie evidence:

21 (i) Of a ~~((confirmed))~~ verified positive drug test or positive  
22 alcohol confirmation test result;

23 (ii) That the motor carrier, employer, or consortium has a program  
24 that is subject to the federal requirements under 49 C.F.R. 40; and

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

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

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

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

1 committed a traffic infraction that is a moving violation and the  
2 department receives no further report of a (~~confirmed~~) verified  
3 positive drug test or positive alcohol confirmation test during the  
4 pendency of the hearing and appeal. If the disqualification is  
5 sustained after the hearing, the person who is disqualified may file a  
6 petition in the superior court of the county of his or her residence to  
7 review the final order of disqualification by the department in the  
8 manner provided in RCW 46.20.334.

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

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

17 **Sec. 4.** RCW 46.25.090 and 2002 c 272 s 3 and 2002 c 193 s 1 are  
18 each reenacted and amended to read as follows:

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

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

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

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

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

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

35 If any of the violations set forth in this subsection occurred  
36 while transporting a hazardous material required to be identified by a

1 placard, the person is disqualified for a period of not less than three  
2 years.

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

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

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

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

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

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

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

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

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

15 (7) A person is disqualified from driving a commercial motor  
16 vehicle if a report has been received by the department under RCW  
17 46.25.125 that the person has received a ~~((confirmed))~~ verified  
18 positive drug test or positive alcohol confirmation test ~~((either))~~ as  
19 part of the testing program ~~((required by 49 C.F.R. 382 or))~~ conducted  
20 under 49 C.F.R. 40 ~~((or as part of a preemployment drug test))~~. A  
21 disqualification under this subsection remains in effect until the  
22 person undergoes a drug and alcohol assessment by ~~((an agency certified~~  
23 ~~by the department of social and health services and, if the person is~~  
24 ~~classified as an alcoholic, drug addict, alcohol abuser, or drug~~  
25 ~~abuser, until))~~ a substance abuse professional meeting the requirements  
26 of 49 C.F.R. 40, and the person presents evidence of satisfactory  
27 participation in or successful completion of a drug or alcohol  
28 treatment and/or education program ~~((that has been certified by the~~  
29 ~~department of social and health services under chapter 70.96A RCW))~~ as  
30 recommended by the substance abuse professional, and until the person  
31 has met the requirements of RCW 46.25.100. The ~~((agency making a drug~~  
32 ~~and alcohol assessment under this section))~~ substance abuse  
33 professional shall forward a diagnostic evaluation and treatment  
34 recommendation to the department of licensing for use in determining  
35 the person's eligibility for driving a commercial motor vehicle.  
36 Persons who are disqualified under this subsection more than twice in  
37 a five-year period are disqualified for life.

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

7 (i) For drivers who are not required to always stop, failing to  
8 slow down and check that the tracks are clear of an approaching train;

9 (ii) For drivers who are not required to always stop, failing to  
10 stop before reaching the crossing, if the tracks are not clear;

11 (iii) For drivers who are always required to stop, failing to stop  
12 before driving onto the crossing;

13 (iv) For all drivers, failing to have sufficient space to drive  
14 completely through the crossing without stopping;

15 (v) For all drivers, failing to obey a traffic control device or  
16 the directions of an enforcement officer at the crossing;

17 (vi) For all drivers, failing to negotiate a crossing because of  
18 insufficient undercarriage clearance.

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

21 (i) Not less than sixty days if the driver is convicted of or is  
22 found to have committed a first violation of a railroad-highway grade  
23 crossing violation;

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

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

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

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