

# HOUSE BILL REPORT

## HB 1266

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### As Reported by House Committee On: Transportation

**Title:** An act relating to positive drug or alcohol test results of commercial motor vehicle operators.

**Brief Description:** Updating laws on drugs and alcohol use by commercial drivers.

**Sponsors:** Representatives Murray, Woods and Kenney; by request of Department of Licensing.

#### **Brief History:**

##### **Committee Activity:**

Transportation: 1/31/05, 2/10/05 [DPS].

#### **Brief Summary of Substitute Bill**

- Provides definitions for terms that are used in the federal regulations, makes terminology consistent with federal regulations, and provides evaluation and treatment standards that are consistent with federal requirements.
- Regulates reporting of positive drug or alcohol tests to the Department of Licensing (DOL). Pre-employment tests must be reported to the DOL along with any other positive tests once employment has been terminated.
- Requires employers of commercial drivers to report to the DOL when a commercial driver refuses to take a drug or alcohol test.
- Clarifies the scope of hearings requested by drivers to challenge disqualification for a positive drug or alcohol test.

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### HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 27 members: Representatives Murray, Chair; Wallace, Vice Chair; Woods, Ranking Minority Member; Skinner, Assistant Ranking Minority Member; Appleton, Buck, Campbell, Curtis, Dickerson, Ericksen, Flannigan, Hankins, Hudgins, Jarrett, Kilmer, Lovick, Morris, Nixon, Rodne, Schindler, Sells, Shabro, Simpson, B. Sullivan, Takko, Upthegrove and Wood.

**Staff:** David Munnecke (786-7315).

**Background:**

Commercial motor carriers are required under federal law to implement drug and alcohol testing programs for their drivers. In 2002, legislation was enacted requiring all medical review officers (MRO) and breath alcohol technicians (BAT) who conduct drug or alcohol testing for commercial motor carriers to report positive test results for a commercial driver directly to the DOL. A driver who wishes to challenge the positive drug or alcohol test result is entitled to a hearing.

The DOL is required to disqualify individuals from driving a commercial motor vehicle if he or she fails a drug or alcohol test. A disqualification remains in effect until the driver presents evidence of satisfactory participation in, or completion of, a drug or alcohol program certified by the Department of Social and Health Services. The DOL reinstates the commercial driver's license once it receives this evidence.

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**Summary of Substitute Bill:**

Definitions are provided for "positive alcohol confirmation test," "substance abuse professional," and "verified positive drug test" and the definition of drugs is clarified to include substances defined in federal regulations.

A refusal to take a drug or alcohol test that meets the standard for refusal under federal law is considered equivalent to a report of a verified positive drug test or a positive alcohol confirmation test, respectively.

A motor carrier, employer, or consortium that is required to have a testing program must report a refusal by a commercial motor vehicle driver to take a drug or alcohol test to DOL, when the MRO or BAT has not reported the refusal.

An MRO or BAT under contract with an employer involved in transit operations may only report a positive alcohol or drug test for transit drivers to the DOL when the positive test is a pre-employment screening test. A transit employer must report a positive test to the DOL only after the driver's employment has been terminated and any grievance procedures have been concluded.

At a hearing to challenge a driver's disqualification, a copy of a positive test result with a declaration by the tester, MRO, or BAT that states the accuracy of the laboratory protocols used to arrive at the test result is prima facie evidence of: (1) the positive test result; (2) that the motor carrier, employer, or consortium has a testing program subject to federal requirements; and (3) that the MRO or BAT making the report accurately followed the protocols for testing established to verify or confirm the results.

A driver's disqualification remains in effect until a driver undergoes a drug and alcohol assessment by a substance abuse professional (SAP) who meets federal requirements. The driver must then present proof of satisfactory participation or completion of the drug or alcohol program recommended by the SAP. The SAP is required to provide a

recommendation to the DOL for use in determining the driver's eligibility for driving a commercial vehicle.

**Substitute Bill Compared to Original Bill:**

Requires reporting by the employer of a positive drug or alcohol confirmation test only when it is the basis for termination or the driver who tested positive resigns.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect on July 1, 2005.

**Testimony For:** One of the important aspects of this bill is the conformity it will create between the state and federal standards for treatment programs. Drivers can then go through a single treatment program and get their license back.

Commercial Driver's License disqualifications are used to determine if a driver should be hired. The driver pool is in flux. Drivers generally move on after a positive test and don't report it. They can then drive for a time with their new employer while the background check is undertaken. Employment gaps can be covered up and there is no national database for Commercial Driver's Licenses that can be checked. This needs to be stopped and all disqualifications need to be reported.

The laboratories that conduct the alcohol and drug tests generate extremely few false positives. The machines used by the laboratories are calibrated regularly and after every positive test. There are two samples taken so the driver can request an independent test if he or she suspects a false positive.

**Testimony Against:** The broader reporting requirements in this bill are problematic. The reporting of positive pre-employment tests is appropriate, but the post-employment disqualification is an inappropriate violation of privacy. Any information should only be shared with the employer, not the DOL. We're already the safest state in the nation, and the state should simply follow the federal guidelines.

**Persons Testifying:** (In support) Clark Holloway, Department of Licensing; Allan Jones, Office of Superintendent Instruction; Pam Beltz, HealthForce Partners; Norm Miller, Washington Trucking Association; and Fred Fakkema, Washington State Patrol.

(Opposed) Jim Fitzgerald, Amalgamated Transit Union Legislative Council.

**Persons Signed In To Testify But Not Testifying:** None.