

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1266

Chapter 325, Laws of 2005

59th Legislature
2005 Regular Session

COMMERCIAL DRIVERS--TRANSIT OPERATORS--DRUG AND ALCOHOL TEST
REPORTING

EFFECTIVE DATE: 7/24/05

Passed by the House April 20, 2005
Yeas 94 Nays 1

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 14, 2005
Yeas 45 Nays 0

BRAD OWEN

President of the Senate

Approved May 9, 2005.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1266** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

May 9, 2005 - 3:13 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1266

AS AMENDED BY THE SENATE

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By House Committee on Transportation (originally sponsored by Representatives Murray, Woods and Kenney; by request of Department of Licensing)

READ FIRST TIME 02/15/05.

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 46.25.125, and 46.25.090; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
6 promote the safety of drivers and passengers on Washington roads and
7 public transportation systems. To this end, Washington has established
8 a reporting requirement for employers of commercial drivers who test
9 positive for unlawful substances. The legislature recognizes that
10 transit operators and their employers are an asset to the public
11 transportation system and continuously strive to provide a safe and
12 efficient mode of travel. In light of this, the legislature further
13 intends that the inclusion of transit employers in the reporting
14 requirements serve only to enhance the current efforts of these
15 dedicated employers and employees as they continue to provide a safe
16 public transportation system to the citizens of Washington.

17 **Sec. 2.** RCW 46.25.010 and 2004 c 187 s 2 are each amended to read
18 as follows:

1 The definitions set forth in this section apply throughout this
2 chapter.

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

6 (2) "Alcohol concentration" means:

7 (a) The number of grams of alcohol per one hundred milliliters of
8 blood; or

9 (b) The number of grams of alcohol per two hundred ten liters of
10 breath.

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

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

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

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

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

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

26 (c) If the vehicle is transporting hazardous materials as defined
27 in this section; or

28 (d) If the vehicle is a school bus regardless of weight or size.

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

30 (8) "Disqualification" means a prohibition against driving a
31 commercial motor vehicle.

32 (9) "Drive" means to drive, operate, or be in physical control of
33 a motor vehicle in any place open to the general public for purposes of
34 vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and
35 46.25.120, "drive" includes operation or physical control of a motor
36 vehicle anywhere in the state.

37 (10) "Drugs" are those substances as defined by RCW 69.04.009_

1 including, but not limited to, those substances defined by 49 C.F.R.
2 40.3.

3 (11) "Employer" means any person, including the United States, a
4 state, or a political subdivision of a state, who owns or leases a
5 commercial motor vehicle, or assigns a person to drive a commercial
6 motor vehicle.

7 (12) "Gross vehicle weight rating" (GVWR) means the value specified
8 by the manufacturer as the maximum loaded weight of a single or a
9 combination or articulated vehicle, or the registered gross weight,
10 where this value cannot be determined. The GVWR of a combination or
11 articulated vehicle, commonly referred to as the "gross combined weight
12 rating" or GCWR, is the GVWR of the power unit plus the GVWR of the
13 towed unit or units.

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

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

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

25 (16) "Positive alcohol confirmation test" means an alcohol
26 confirmation test that:

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

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

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

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

38 ((+17)) (18) "Serious traffic violation" means:

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

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

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

7 (d) Driving a commercial motor vehicle without obtaining a
8 commercial driver's license;

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

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

19 (g) Any other violation of a state or local law relating to motor
20 vehicle traffic control, other than a parking violation, that the
21 department determines by rule to be serious.

22 ~~((+18+))~~ (19) "State" means a state of the United States and the
23 District of Columbia.

24 ~~((+19+))~~ (20) "Substance abuse professional" means an alcohol and
25 drug specialist meeting the credentials, knowledge, training, and
26 continuing education requirements of 49 C.F.R. 40.281.

27 (21) "Tank vehicle" means a vehicle that is designed to transport
28 a liquid or gaseous material within a tank that is either permanently
29 or temporarily attached to the vehicle or the chassis. Tank vehicles
30 include, but are not limited to cargo tanks and portable tanks.
31 However, this definition does not include portable tanks having a rated
32 capacity under one thousand gallons.

33 ~~((+20+))~~ (22) "United States" means the fifty states and the
34 District of Columbia.

35 (23) "Verified positive drug test" means a drug test result or
36 validity testing result from a laboratory certified under the authority
37 of the federal department of health and human services that:

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

3 (b) Has undergone review and final determination by a medical
4 review officer.

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

9 **Sec. 3.** RCW 46.25.123 and 2002 c 272 s 1 are each amended to read
10 as follows:

11 (1) All medical review officers or breath alcohol technicians hired
12 by or under contract to a motor carrier or employer who employs drivers
13 who operate commercial motor vehicles and who is required to have a
14 testing program conducted under the procedures established by 49 C.F.R.
15 ((382)) 40 or to a consortium the carrier or employer belongs to, as
16 defined in 49 C.F.R. ((382.17)) 40.3, shall report the finding of a
17 commercial motor vehicle driver's ((confirmed)) verified positive drug
18 test or positive alcohol confirmation test to the department of
19 licensing on a form provided by the department. If the employer is
20 required to have a testing program under 49 C.F.R. 655, a report of a
21 verified positive drug test or positive alcohol confirmation test must
22 not be forwarded to the department under this subsection unless the
23 test is a pre-employment drug test conducted under 49 C.F.R. 655.41 or
24 a pre-employment alcohol test conducted under 49 C.F.R. 655.42.

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

34 (b) An employer who is required to have a testing program under 49
35 C.F.R. 655 must report a commercial motor vehicle driver's verified
36 positive drug test or a positive alcohol confirmation test when: (i)
37 The driver's employment has been terminated or the driver has resigned;

1 (ii) any grievance process, up to but not including arbitration, has
2 been concluded; and (iii) at the time of termination or resignation the
3 driver has not been cleared to return to safety-sensitive functions.

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

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

20 **Sec. 4.** RCW 46.25.125 and 2002 c 272 s 2 are each amended to read
21 as follows:

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

34 (2) A person disqualified from driving a commercial motor vehicle
35 for having a ~~((confirmed))~~ verified positive drug test or positive
36 alcohol confirmation test may request a hearing to challenge the
37 disqualification within twenty days from the date notice is given. If

1 the request for a hearing is mailed, it must be postmarked within
2 twenty days after the department has given notice of the
3 disqualification.

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

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

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

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

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

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

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

37 (6) A decision by the department disqualifying a person from
38 driving a commercial motor vehicle is stayed and does not take effect

1 while a formal hearing is pending under this section or during the
2 pendency of a subsequent appeal to superior court so long as there is
3 no conviction for a moving violation or no finding that the person has
4 committed a traffic infraction that is a moving violation and the
5 department receives no further report of a ((~~confirmed~~)) verified
6 positive drug test or positive alcohol confirmation test during the
7 pendency of the hearing and appeal. If the disqualification is
8 sustained after the hearing, the person who is disqualified may file a
9 petition in the superior court of the county of his or her residence to
10 review the final order of disqualification by the department in the
11 manner provided in RCW 46.20.334.

12 (7) The department of licensing may adopt rules specifying further
13 requirements for requesting and conducting a hearing under this
14 section.

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

20 **Sec. 5.** RCW 46.25.090 and 2004 c 187 s 7 are each amended to read
21 as follows:

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

27 (a) Driving a motor vehicle under the influence of alcohol or any
28 drug;

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

33 (c) Leaving the scene of an accident involving a motor vehicle
34 driven by the person;

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

36 (e) Refusing to submit to a test to determine the driver's alcohol
37 concentration while driving a motor vehicle;

1 (f) Driving a commercial motor vehicle when, as a result of prior
2 violations committed while operating a commercial motor vehicle, the
3 driver's commercial driver's license is revoked, suspended, or
4 canceled, or the driver is disqualified from operating a commercial
5 motor vehicle;

6 (g) Causing a fatality through the negligent operation of a
7 commercial motor vehicle, including but not limited to the crimes of
8 vehicular homicide and negligent homicide.

9 If any of the violations set forth in this subsection occurred
10 while transporting hazardous material, the person is disqualified for
11 a period of not less than three 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.

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

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

27 (5) A person is disqualified from driving a commercial motor
28 vehicle for a period of:

29 (a) Not less than sixty days if:

30 (i) Convicted of or found to have committed a second serious
31 traffic violation while driving a commercial motor vehicle; or

32 (ii) Convicted of reckless driving, where there has been a prior
33 serious traffic violation; or

34 (b) Not less than one hundred twenty days if:

35 (i) Convicted of or found to have committed a third or subsequent
36 serious traffic violation while driving a commercial motor vehicle; or

37 (ii) Convicted of reckless driving, where there has been two or
38 more prior serious traffic violations.

1 For purposes of determining prior serious traffic violations under
2 this subsection, each conviction of or finding that a driver has
3 committed a serious traffic violation while driving a commercial motor
4 vehicle or noncommercial motor vehicle, arising from a separate
5 incident occurring within a three-year period, must be counted.

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

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

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

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

19 (d) Not less than one hundred eighty days nor more than two years
20 if the person is convicted of or is found to have committed a first
21 violation of an out-of-service order while transporting hazardous
22 materials, or while operating motor vehicles designed to transport
23 sixteen or more passengers, including the driver. A person is
24 disqualified for a period of not less than three years nor more than
25 five years if, during a ten-year period, the person is convicted of or
26 is found to have committed subsequent violations of out-of-service
27 orders, in separate incidents, while transporting hazardous materials,
28 or while operating motor vehicles designed to transport sixteen or more
29 passengers, including the driver.

30 (7) A person is disqualified from driving a commercial motor
31 vehicle if a report has been received by the department under RCW
32 46.25.125 that the person has received a (~~confirmed~~) verified
33 positive drug test or positive alcohol confirmation test (~~either~~) as
34 part of the testing program (~~required by 49 C.F.R. 382 or~~) conducted
35 under 49 C.F.R. 40 (~~or as part of a preemployment drug test~~). A
36 disqualification under this subsection remains in effect until the
37 person undergoes a drug and alcohol assessment by (~~an agency certified~~
38 ~~by the department of social and health services and, if the person is~~

1 ~~classified as an alcoholic, drug addict, alcohol abuser, or drug~~
2 ~~abuser, until~~) a substance abuse professional meeting the requirements
3 of 49 C.F.R. 40, and the person presents evidence of satisfactory
4 participation in or successful completion of a drug or alcohol
5 treatment and/or education program ((that has been certified by the
6 department of social and health services under chapter 70.96A RCW)) as
7 recommended by the substance abuse professional, and until the person
8 has met the requirements of RCW 46.25.100. The ((agency making a drug
9 and alcohol assessment under this section)) substance abuse
10 professional shall forward a diagnostic evaluation and treatment
11 recommendation to the department of licensing for use in determining
12 the person's eligibility for driving a commercial motor vehicle.
13 Persons who are disqualified under this subsection more than twice in
14 a five-year period are disqualified for life.

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

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

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

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

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

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

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

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

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

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

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

8 (9) A person is disqualified from driving a commercial motor
9 vehicle for not more than one year if a report has been received by the
10 department from the federal motor carrier safety administration that
11 the person's driving has been determined to constitute an imminent
12 hazard as defined by 49 C.F.R. 383.5.

13 (10) Within ten days after suspending, revoking, or canceling a
14 commercial driver's license or disqualifying a driver from operating a
15 commercial motor vehicle, the department shall update its records to
16 reflect that action.

Passed by the House April 20, 2005.

Passed by the Senate April 14, 2005.

Approved by the Governor May 9, 2005.

Filed in Office of Secretary of State May 9, 2005.