

HOUSE BILL REPORT

SB 5041

As Passed House:

March 24, 2023

Title: An act relating to compliance with federal motor carrier safety administration requirements for the drug and alcohol clearinghouse.

Brief Description: Concerning compliance with federal motor carrier safety administration requirements for the drug and alcohol clearinghouse.

Sponsors: Senators Lovick, King and Lias; by request of Department of Licensing.

Brief History:

Committee Activity:

Transportation: 3/9/23, 3/16/23 [DP].

Floor Activity:

Passed House: 3/24/23, 96-0.

Brief Summary of Bill

- Shifts mandatory reporting to the Department of Licensing of Commercial Driver's License and Commercial Learner's Permit drug and alcohol testing results to mandatory reporting to the Federal Motor Carrier Safety Administration's Drug and Alcohol Clearinghouse.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass. Signed by 29 members: Representatives Fey, Chair; Donaghy, Vice Chair; Paul, Vice Chair; Timmons, Vice Chair; Barkis, Ranking Minority Member; Hutchins, Assistant Ranking Minority Member; Low, Assistant Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Berry, Bronoske, Chapman, Cortes, Dent, Doglio, Duerr, Entenman, Goehner, Griffey, Hackney, Klicker, Mena, Orcutt, Ramel, Ramos, Schmidt, Taylor, Volz, Walsh and Wylie.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Jennifer Harris (786-7143).

Background:

To operate a commercial motor vehicle in Washington, a person must hold a Commercial Driver's License (CDL) or Commercial Learner's Permit (CLP) issued by the Washington State Department of Licensing (DOL) with the applicable endorsements for the vehicle that is being driven. The Federal Motor Carrier Safety Administration (FMCSA) requires employers to have a drug and alcohol testing program that meets federal requirements for commercial drivers they employ.

Commercial Driver's License Drug and Alcohol Testing: Mandatory Reporting.

All medical review officers or breath alcohol technicians hired by or under contract to a motor carrier or employer who employs drivers who operate commercial motor vehicles and who is required to have a testing program conducted under the procedures established in federal law are required to report the finding of a commercial motor vehicle driver's verified positive drug test or positive alcohol confirmation test to the DOL. A motor carrier or employer who employs drivers who operate commercial motor vehicles and who is required to have a testing program under procedures established in federal law must also report a refusal by a commercial motor vehicle driver to take a drug or alcohol test.

Motor carriers and employers are required to make it a written condition of their contract or agreement with a medical review officer or breath alcohol technician that the medical review officer or breath alcohol technician is required to report all licensed Washington drivers who have a verified positive drug test or positive alcohol confirmation test to the DOL within three business days of the verification or confirmation. Failure to obtain this contractual condition or agreement with the medical review officer or breath alcohol technician by the motor carrier, employer, or consortium, or failure to report a refusal will result in an administrative fine.

Commercial Driver's License Disqualification for a Positive Drug Test.

When the DOL receives a report from a medical review officer, breath alcohol technician, employer, contractor, or consortium that a driver has a verified positive drug test or positive alcohol confirmation test as part of the testing program conducted under federal law, the DOL shall disqualify the driver from driving a commercial motor vehicle subject to an administrative hearing. The DOL is required to notify the person in writing of the disqualification. A person disqualified from driving a commercial motor vehicle for having a verified positive drug test or positive alcohol confirmation test may request a hearing to challenge the disqualification.

A person is disqualified from driving a commercial motor vehicle if a report has been received by the DOL that the person has received a verified positive drug test or positive alcohol confirmation test as part of the testing program conducted under federal law. A disqualification remains in effect until the person undergoes a drug and alcohol assessment

by a substance abuse professional who meets federal qualification requirements, presents evidence of satisfactory participation in or successful completion of a drug or alcohol treatment or education program or both as recommended by the substance abuse professional, and pays any applicable restoration fees. Once these requirements have been met, the person may apply for a new, duplicate, or renewal CDL.

Substance abuse professionals are required to forward a diagnostic evaluation and treatment recommendation to the DOL for use in determining the person's eligibility for driving a commercial motor vehicle. Drivers who are disqualified more than twice in a five-year period for the failure of drug and alcohol testing or for refusal to take a drug and alcohol test are disqualified for life.

Federal Commercial Driver's License Drug and Alcohol Clearinghouse.

In 2020 the FMCSA established a nationwide Drug and Alcohol Clearinghouse (Clearinghouse) to maintain records of federal drug and alcohol violations, including positive drug or alcohol test results and refusals to submit to a test when required. Employers, medical review officers, and substance abuse professionals are required to report violations to the Clearinghouse. Drivers may petition the FMCSA to challenge the accuracy of the information reported to the Clearinghouse or request an administrative review if they believe an FMCSA decision was made in error.

Beginning November 18, 2024, the FMCSA will require states to participate in the federal drug and alcohol testing program.

Summary of Bill:

Mandatory reporting to the DOL of CDL drug and alcohol testing results and refusal to submit to testing is shifted to reporting to the FMCSA's Clearinghouse. It is a condition for new CDL and CLP issuance that the driver not be prohibited from operating a commercial motor vehicle in the Clearinghouse at the time of CDL or CLP issuance. The DOL is prohibited from renewing a CDL if the CDL holder is prohibited from operating a commercial motor vehicle in the Clearinghouse.

The DOL must downgrade a CDL or CLP to a non-commercial driver's license within 60 days of receiving notification from the Clearinghouse that the driver is prohibited from operating a commercial motor vehicle. The DOL is required to remove a downgrade of a CDL or CLP after receiving notification from the FMCSA's Clearinghouse that the driver is no longer prohibited from operating a commercial motor vehicle.

The FMCSA is responsible for administrative review of FMCSA determinations provided in the Clearinghouse.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on November 18, 2024.

Staff Summary of Public Testimony:

(In support) This bill would ensure that state CDL requirements remain compliant with federal law. It would also keep commercial drivers who abuse drugs and alcohol off roadways in the state. It is a companion to House Bill 1448, which passed out of the House Transportation Committee unanimously.

(Opposed) None.

Persons Testifying: Senator John Lovick, prime sponsor; and Beau Perschbacher, Washington Department of Licensing.

Persons Signed In To Testify But Not Testifying: None.