

HOUSE BILL NO. 185

INTRODUCED BY WILSON

BY REQUEST OF THE DEPARTMENT OF JUSTICE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING COMMERCIAL  
6 DRIVER LICENSING TO CONFORM WITH REQUIREMENTS OF THE FEDERAL MOTOR CARRIER SAFETY  
7 IMPROVEMENT ACT OF 1999 (MCSIA), ~~THE USA PATRIOT ACT~~, AND THE FEDERAL REGULATIONS  
8 IMPLEMENTING MCSIA; DEFINING "NONCOMMERCIAL MOTOR VEHICLE"; REVISING THE DEFINITIONS  
9 OF "COMMERCIAL MOTOR VEHICLE" AND "COMMERCIAL DRIVER'S LICENSE"; CLARIFYING THE  
10 REQUIREMENTS FOR OPERATION OF A COMMERCIAL MOTOR VEHICLE; REVISING THE  
11 REQUIREMENTS GOVERNING THE APPLICATION FOR AND RENEWAL OF A COMMERCIAL DRIVER'S  
12 LICENSE; REVISING REQUIREMENTS FOR REQUESTING DRIVING RECORDS FROM A PRIOR STATE  
13 OF LICENSURE; ~~REVISING RULEMAKING AUTHORITY OF THE DEPARTMENT OF JUSTICE TO INCLUDE~~  
14 ~~HOMELAND SECURITY INVESTIGATIONS REQUIRED INCIDENT TO THE ISSUANCE, RENEWAL, OR~~  
15 ~~TRANSFER OF A COMMERCIAL DRIVER'S LICENSE~~; REVISING LICENSE SUSPENSION PERIODS AND  
16 COMPUTATION REQUIREMENTS FOR NONCOMMERCIAL AND COMMERCIAL MOTOR VEHICLE IMPLIED  
17 CONSENT LAWS; REVISING REQUIREMENTS FOR SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE  
18 FOR MAJOR OFFENSES OR FOR CONDUCT OCCURRING WHILE OPERATING A NONCOMMERCIAL  
19 MOTOR VEHICLE; CLARIFYING THE REQUIREMENTS FOR SUSPENSION OF A COMMERCIAL DRIVER'S  
20 LICENSE FOR A PERSON WHO OPERATES A COMMERCIAL MOTOR VEHICLE WITHOUT A COMMERCIAL  
21 DRIVER'S LICENSE OR PROPER ENDORSEMENT OR WHILE THE PERSON'S COMMERCIAL DRIVER'S  
22 LICENSE IS SUSPENDED; INCLUDING NONCOMMERCIAL MOTOR VEHICLE OFFENSES ~~IN THE~~  
23 ~~DEFINITION OF "SERIOUS TRAFFIC VIOLATION" AND~~ IN THE LIST OF FELONY-DRUG OFFENSES FOR  
24 WHICH SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE IS REQUIRED; AMENDING SECTIONS  
25 61-1-134, 61-1-135, 61-5-102, 61-5-107, 61-5-110, 61-5-111, 61-5-112, 61-5-118, 61-5-212, 61-8-402, 61-8-802,  
26 61-8-803, 61-8-804, 61-8-805, 61-8-806, AND 61-11-102, MCA; REPEALING SECTION 61-5-117, MCA; AND  
27 PROVIDING EFFECTIVE ~~DATES AND~~ APPLICABILITY DATES."

28  
29 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
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1            **NEW SECTION. Section 1. Noncommercial motor vehicle defined.** "Noncommercial motor vehicle"  
2 means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial  
3 motor vehicle in 61-1-134 and includes but is not limited to the vehicles listed in 61-1-134(2).

4  
5            **NEW SECTION. Section 2. Suspension of commercial driver's license -- railroad crossing**  
6 **offenses.** (1) The department shall suspend a person's commercial driver's license upon the report of a  
7 conviction of any of the following railroad crossing offenses or conduct:

- 8            (a) for drivers who are not required to always stop:  
9            (i) failing to slow down and check that the tracks are clear of an approaching train; or  
10            (ii) failing to stop before reaching the crossing if the tracks are not clear;  
11            (b) for drivers who are always required to stop, failing to stop before driving onto the crossing;  
12            (c) for all drivers:  
13            (i) failing to have sufficient space to drive completely through the crossing without stopping;  
14            (ii) failing to obey a traffic control device or the directions of an enforcement official at the crossing; or  
15            (iii) failing to negotiate a crossing because of insufficient undercarriage clearance.

16            (2) Upon receipt of a report of a conviction of any railroad crossing offense or conduct described in  
17 subsection (1), the following suspension periods must be imposed:

- 18            (a) 60 days upon a first conviction;  
19            (b) 120 days upon a second conviction within a 3-year period; or  
20            (c) 1 year upon a third or subsequent conviction within a 3-year period.

21  
22            **NEW SECTION. Section 3. Probationary drivers's license ineligibility.** A person whose commercial  
23 driver's license or commercial motor vehicle operating privilege is suspended under this part:

24            (1) is not eligible for a restricted probationary driver's license that would permit operation of a  
25 commercial motor vehicle during the period of suspension; and

26            (2) may not operate a commercial motor vehicle until the period of suspension is completed and the  
27 person is otherwise eligible, under state and federal law, to have the commercial driver's license restored or to  
28 reapply for a commercial driver's license.

29  
30            **Section 4.** Section 61-1-134, MCA, is amended to read:

1           **"61-1-134. Commercial motor vehicle defined -- exceptions.** (1) Except as provided in subsection  
 2 (2), "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to  
 3 transport passengers or property if the vehicle:

4           (a) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more,  
 5 whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

6           (b) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever  
 7 is greater;

8           (c) is designed to transport at least 16 passengers, including the driver;

9           (d) is a school bus as defined in 20-10-101; or

10          (e) is of any size and is used to transport any quantity or form of hazardous material required to be  
 11 placarded pursuant to Title 49, Code of Federal Regulations.

12          (2) The following vehicles are not commercial motor vehicles:

13          (a) ~~a vehicle exempt from taxation, used for firefighting, and bearing Montana tax-exempt plates;~~

14 ~~— (b) a police emergency response vehicle~~ an authorized emergency service vehicle:

15           (i) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; AND

16           (ii) entitled to the exemptions granted under 61-8-107; and

17 ~~— (iii) responding to or returning from an emergency call; or~~

18           ~~(e)(b)~~ a vehicle:

19           (i) controlled and operated by a farmer, family member of the farmer, or person employed by ~~a~~ the  
 20 farmer;

21           (ii) used to transport farm products, farm machinery, or farm supplies within Montana ~~or~~ within 150 miles  
 22 of the farm ~~headquarters~~ or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles  
 23 of the farm, including any area within that perimeter that is in the adjoining state; and

24           (iii) not used to transport goods for compensation or hire.

25          (3) For purposes of this section:

26           (a) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land  
 27 or crops or the raising of livestock owned by or under the direct control of that person;

28           (b) "gross combination weight rating" means the value specified by the manufacturer as the loaded  
 29 weight of a combination or articulated vehicle; and

30           (c) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight

1 of a single vehicle."

2

3 **Section 5.** Section 61-1-135, MCA, is amended to read:

4 **"61-1-135. Commercial driver's license.** "Commercial driver's license" means:

5 (1) a Montana driver's license issued under or granted by the laws of this state that authorizes the  
6 licensee a person to operate a class of commercial motor vehicle; and

7 (2) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid  
8 commercial motor vehicle DRIVER'S license."

9

10 **Section 6.** Section 61-5-102, MCA, is amended to read:

11 **"61-5-102. Drivers to be licensed.** (1) Except as provided in 61-5-104, a person may not drive a motor  
12 vehicle upon a highway in this state unless the person has a valid Montana driver's license. A person may not  
13 receive a Montana driver's license until the person surrenders to the department all valid driver's licenses issued  
14 by any other jurisdiction. A person may not have in the person's possession or under the person's control more  
15 than one valid Montana driver's license at any time.

16 (2) (a) A license is not valid for the operation of a motorcycle or quadricycle unless the holder of the  
17 license has completed the requirements of 61-5-110 and the license has been clearly marked with the words  
18 "motorcycle endorsement". A motorcycle endorsement is required for the operation of a quadricycle.

19 (b) A license is not valid for the operation of a commercial motor vehicle unless the holder of the license  
20 has completed the requirements of 61-5-110, and the license has been clearly marked with the words  
21 "commercial driver's license", and the license bears the proper endorsement for:

22 (i) the specific vehicle type or types being operated; or

23 (ii) the passengers or type or types of cargo being transported.

24 (3) When a city or town requires a licensed driver to obtain a local driving license or permit, a license  
25 or permit may not be issued unless the applicant presents a state driver's license valid under the provisions of  
26 this chapter."

27

28 **Section 7.** Section 61-5-107, MCA, is amended to read:

29 **"61-5-107. Application for license, instruction permit, or motorcycle endorsement.** (1) Each  
30 application for an instruction permit, driver's license, commercial driver's license, or motorcycle endorsement

1 must be made upon a form furnished by the department. Each application must be accompanied by the proper  
 2 fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within  
 3 a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by  
 4 the secretary of state must be attached to each driver's license application. If the applicant wishes to register  
 5 to vote, the department shall accept the registration and forward the form to the election administrator.

6 (2) Each application must include the full legal name, date of birth, sex, residence address of the  
 7 applicant [and the applicant's social security number], must include a brief description of the applicant, and must  
 8 ~~include a statement that allows the department to determine if~~ provide the following additional information:

9 (a) the name of each jurisdiction in which the applicant has previously been licensed as a driver or  
 10 commercial vehicle operator, and, if so, when and by what state or country to drive any type of motor vehicle  
 11 during the 10-year period immediately preceding the date of the application;

12 (b) ~~any commercial driver's license has ever been suspended or revoked~~ a certification from the  
 13 applicant that the applicant is not currently subject to a suspension, revocation, disqualification, or withdrawal  
 14 of a previously issued driver's license or any driving privileges in another jurisdiction and that the applicant does  
 15 not have a driver's license from another jurisdiction;

16 (c) ~~an application has ever been denied and, if so, the date of and reason for suspension, revocation,~~  
 17 ~~or denial;~~

18 ~~——(d)(c) the applicant has a~~ a brief description of any physical or mental disability, limitation, or condition  
 19 that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation  
 20 of a motor vehicle on the highway; and

21 (e)(d) ~~the applicant relies upon, or intends to rely upon,~~ a brief description of any adaptive equipment  
 22 or operational restrictions that the applicant relies upon or intends to rely upon to attain the ability to exercise  
 23 ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature  
 24 of the equipment or restrictions.

25 [(3) The department shall keep the applicant's social security number from this source confidential,  
 26 except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise  
 27 permitted by state law administered by the department and may be provided to the department of public health  
 28 and human services for use in administering Title IV-D of the Social Security Act.]

29 (4) When an application is received from an applicant previously licensed by another jurisdiction, the  
 30 department shall request a copy of the applicant's driving record from ~~the previous licensing jurisdiction~~ each

1 jurisdiction in which the applicant was licensed in the preceding 10-year period. The driving record may be  
 2 transmitted manually or by electronic medium. When received, the driving records ~~become a part of~~ must be  
 3 appended to the driver's record created and maintained in this state ~~with the same force and effect as though~~  
 4 ~~entered on the driver's record in this state in the original instance.~~ (Bracketed language terminates on occurrence  
 5 of contingency--sec. 1, Ch. 27, L. 1999.)"

6

7 **Section 8.** Section 61-5-110, MCA, is amended to read:

8 **"61-5-110. Records check of applicants -- examination of applicants -- cooperative driver testing**

9 **programs.** (1) Prior to examining an applicant for a driver's license, the department shall conduct a check of the  
 10 applicant's driving record by querying the national driver register, established under 49 U.S.C. 30302, ~~or~~ and  
 11 the commercial driver's license information system, established under 49 U.S.C. 31309.

12 (2) The department shall examine each applicant for a driver's license or motorcycle endorsement,  
 13 except as otherwise provided in this section. The examination must include a test of the applicant's eyesight,  
 14 a knowledge test examining the applicant's ability to read and understand highway signs and the applicant's  
 15 knowledge of the traffic laws of this state, and, except as provided in 61-5-118, a road test or a skills test  
 16 demonstrating the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor  
 17 vehicle, quadricycle, or motorcycle. The knowledge test or road test, or both, may be waived by the department  
 18 upon certification of the applicant's successful completion of the test by a certified cooperative driver testing  
 19 program, as provided in subsection (3).

20 (3) The department is authorized to certify as a cooperative driver testing program any state-approved  
 21 high school traffic education course offered by or in cooperation with a school district that employs an approved  
 22 instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic  
 23 education or any motorcycle safety training course approved by the board of regents and that employs an  
 24 approved instructor of motorcycle safety training and who agrees to:

25 (a) administer standardized knowledge and road tests required by the department to students  
 26 participating in the district's high school traffic education courses or motorcycle safety training courses approved  
 27 by the board of regents;

28 (b) certify the test results to the department; and

29 (c) comply with regulations of the department, the superintendent of public instruction, and the board  
 30 of regents.

1 (4) (a) Except as otherwise provided by law, a resident who has a valid driver's license issued by  
2 another jurisdiction may surrender that license for a Montana license of the same class, type, and endorsement  
3 upon payment of the required fees and successful completion of a vision examination. In addition, a resident  
4 surrendering a commercial driver's license issued by another jurisdiction shall successfully complete any  
5 examination required by federal regulations before being issued a commercial driver's license by the department.

6 (b) The department may require an applicant who surrenders a valid driver's license issued by another  
7 jurisdiction to submit to a knowledge and skills test if:

8 (i) the applicant has a physical or mental disability, limitation, or condition that impairs, or may impair,  
9 the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the  
10 highway; and

11 (ii) the surrendered license does not include readily discernible adaptive equipment or operational  
12 restrictions appropriate to the applicant's functional abilities; or

13 (iii) the applicant wants to remove or modify a restriction imposed on the surrendered license.

14 (c) When a license from another jurisdiction is surrendered, the department shall notify the issuing  
15 agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain  
16 the license from another jurisdiction for identification or other nondriving purposes, the department shall place  
17 a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return  
18 the marked license to the applicant."

19

20 **Section 9.** Section 61-5-111, MCA, is amended to read:

21 **"61-5-111. Contents of a driver's license, renewal, renewal by mail, license expirations, grace**  
22 **period, and fees for licenses, permits, and endorsements -- notice of expiration.** (1) The department may  
23 appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts  
24 and shall make necessary rules governing sales. In areas in which the department provides driver licensing  
25 services 3 days or more a week, the department is responsible for sale of receipts and may, in its discretion,  
26 appoint an agent to sell receipts.

27 (2) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's  
28 license to each qualifying applicant. The license must contain a full-face photograph of the licensee in the size  
29 and form prescribed by the department; a distinguishing number issued to the licensee; the full legal name, date  
30 of birth, Montana mailing address, and a brief description of the licensee; and either the licensee's customary

1 signature or a digital reproduction of the licensee's customary signature. The department may not use the  
2 licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use.  
3 A license is not valid until it is signed by the licensee.

4 (3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records  
5 check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's  
6 eyesight. The department may also require the applicant to submit to a knowledge and skills test if:

7 (i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may  
8 impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle  
9 on the highway; and

10 (ii) the expired or expiring license does not include adaptive equipment or operational restrictions  
11 appropriate to the applicant's functional abilities; or

12 (iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

13 (b) In the case of a commercial driver's license, the department shall, if the information was not provided  
14 in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the  
15 applicant was previously licensed to drive any type of motor vehicle during the 10-year period immediately  
16 preceding the date of the renewal application and may also require that the applicant successfully complete a  
17 written examination as required by federal regulations.

18 (c) A person is considered to have applied for renewal of a Montana driver's license if the application  
19 is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in  
20 subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's  
21 examination station.

22 (d) (i) A person may renew a driver's license by mail if the person certifies that the person is temporarily  
23 out of state and will not be returning to the state prior to the expiration of the license.

24 (ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision  
25 examination and a medical evaluation from a licensed physician in addition to the fees required for renewal.

26 (iii) If the department does not have a digitized photograph or signature record of the renewal applicant  
27 from the expiring license, then the department may require the renewal applicant to submit a personal  
28 photograph and signature that meets the requirements prescribed by the department.

29 (iv) The term of a license renewed by mail is 4 years, and a person may not renew by mail for  
30 consecutive license terms.



1 (v) The department may not renew a license by mail if the records check conducted in accordance with  
2 61-5-110(1) shows an ineligible license status for the applicant.

3 (e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than  
4 30 days prior to the expiration date of a commercial driver's license if the licensee has previously submitted a  
5 written request for the notice, either at the time of initial application or of renewal of the license.

6 (4) (a) Except as provided in subsections (4)(b) and (4)(c), a license expires on the anniversary of the  
7 licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs  
8 first.

9 (b) A license issued to a person who is 75 years of age or older expires on the anniversary of the  
10 licensee's birthday 4 years or less after the date of issue.

11 (c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

12 (5) Whenever the department issues an original license to a person under the age of 18 years, the  
13 license must be designated and clearly marked as a "provisional license". Any license designated and marked  
14 as provisional may be suspended by the department for a period of not more than 12 months when its records  
15 disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent  
16 driving.

17 (6) Fees for driver's licenses are:

18 (a) driver's license, except a commercial driver's license -- \$4 a year or fraction of a year;

19 (b) motorcycle endorsement -- 50 cents a year or fraction of a year;

20 (c) commercial driver's license:

21 (i) interstate -- \$5 a year or fraction of a year;

22 (ii) intrastate -- \$3.50 a year or fraction of a year.

23 (7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has  
24 surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on  
25 the person's official driver record to "inactive". If the person returns to Montana prior to the expiration of the  
26 previously surrendered license, the department may reactivate the license for the remainder of the license term."  
27

28 **Section 10.** Section 61-5-112, MCA, is amended to read:

29 **"61-5-112. Types and classes of commercial driver's licenses -- classification -- rulemaking --**

30 **RECIPROCITY AGREEMENTS.** (1) The department shall adopt rules that it considers necessary for the safety and

1 welfare of the traveling public governing the classification of commercial driver's licenses and related  
 2 endorsements and the examination of commercial driver's license applicants and renewal applicants. The rules  
 3 must:

4 ~~(4)(A)~~ subject to the exceptions provided in this section, comport with the requirements of 49 CFR, part  
 5 383, and the medical qualifications of 49 CFR, part 391;

6 ~~(2)(B)~~ allow for the issuance of a type 2 (intrastate only) commercial driver's license in accordance with  
 7 medical qualification and visual acuity standards prescribed by the department;

8 ~~(3)(C)~~ allow for the issuance of a type 2 commercial driver's license to a person who is 18 years of age  
 9 or older or an operationally restricted type 2 commercial driver's license to a person who is 16 years of age or  
 10 older;

11 ~~(4)(D)~~ allow for issuance of a seasonal commercial driver's license based on standards established by  
 12 the department for the waiver of the knowledge and skills test for a qualified person employed in farm-related  
 13 service industries who has a good driving record and sufficient prior driving experience;

14 ~~(5)(E)~~ prescribe the operational and seasonal restrictions for a seasonal commercial driver's license;  
 15 and

16 ~~(6)(F)~~ prescribe the requirements for the medical statement that must be submitted in order for a person  
 17 to be qualified for a type 2 commercial driver's license; AND

18 ~~(7)(G)~~ prescribe the minimum standards for certification of a third-party commercial driver testing  
 19 program and any test waiver under 61-5-118; and

20 ~~— (8) provide for any homeland security investigation required under federal law incident to the issuance,~~  
 21 ~~renewal, upgrade, or transfer of a commercial driver's license or related endorsement.~~

22 (2) THE DEPARTMENT IS AUTHORIZED TO ENTER INTO RECIPROCAL AGREEMENTS WITH ADJACENT STATES THAT  
 23 WOULD ALLOW CERTAIN DRIVERS OF VEHICLES TRANSPORTING FARM PRODUCTS, FARM MACHINERY, OR FARM SUPPLIES  
 24 WITHIN 150 MILES OF A FARM TO OPERATE WITHOUT A COMMERCIAL DRIVER'S LICENSE AS PROVIDED IN 61-1-134(2)."

25  
 26 **Section 11.** Section 61-5-118, MCA, is amended to read:

27 **"61-5-118. Third-party commercial driver testing program -- test waiver.** (1) The department may  
 28 certify as a third-party commercial driver testing program any company that:

29 (a) in the course of its commercial enterprise, customarily transports or hauls any goods, including  
 30 agricultural commodities, in company-owned class A commercial motor vehicles as prescribed by federal

1 regulations;

2 (b) regularly and continuously employs a minimum number of drivers. The department shall determine  
3 the minimum number of drivers and whether they are regularly and continuously employed by the company.

4 (c) has a permanent Montana mailing address and maintains a place of business in this state that  
5 includes at least one permanent, regularly occupied structure with facilities and equipment to conduct offstreet  
6 skills testing;

7 (d) employs at least one examiner with qualifications required by rules of the department; and

8 (e) complies with rules adopted by the department under ~~61-5-117~~ 61-5-112.

9 (2) The road test or the skills test required by 61-5-110 may be waived by the department for a  
10 commercial driver's license applicant upon certification of the applicant's successful completion of the road test  
11 or the skills test by:

12 (a) a third-party commercial driver testing program certified under subsection (1); or

13 (b) a third-party commercial driver examiner from a jurisdiction that has a comparable third-party  
14 commercial driver testing program, as determined by the department.

15 (3) An examiner for a certified third-party commercial driver testing program may administer a road test  
16 or a skills test only to a company employee who has applied to the department for a commercial driver's license  
17 and who has passed the knowledge test required by 61-5-110 and by department or federal rules."

18

19 **Section 12.** Section 61-5-212, MCA, is amended to read:

20 **"61-5-212. Driving while license suspended or revoked -- penalty -- seizure of vehicle or rendering**  
21 **vehicle inoperable.** (1) (a) A person who commits the offense of driving a motor vehicle during a suspension  
22 or revocation period if the person drives:

23 (i) a motor vehicle or commercial motor vehicle on any public highway of this state at a time when the  
24 person's privilege to do so is suspended or revoked in this state or any other state; or

25 (ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended,  
26 or canceled in this state or any other state or the person is disqualified from operating a commercial motor  
27 vehicle under federal regulations.

28 (b) A person convicted of the offense of driving a motor vehicle during a suspension or revocation  
29 period is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 2  
30 days or more than 6 months and may be fined not more than \$500.

1           (2) (a) The department upon receiving a record of the conviction of any person under this section upon  
2 a charge of driving a noncommercial vehicle while the person's driver's license or privilege to drive was  
3 suspended or revoked shall extend the period of suspension or revocation for an additional like period.

4           (b) Upon receiving a record of the conviction of any person under this section upon a charge of driving  
5 a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled  
6 or the person was disqualified from operating a commercial motor vehicle under federal regulations, the  
7 department shall suspend the person's commercial driver's license in accordance with 61-8-802.

8           (3) The vehicle owned and operated at the time of an offense under this section by a person whose  
9 driver's license is suspended or revoked for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409,  
10 or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the  
11 convicted person's county of residence for a period of 30 days.

12           (4) The sentencing court shall order the action provided for under subsection (3) and shall specify the  
13 date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered  
14 inoperable by the sheriff within 10 days after the conviction.

15           (5) A convicted person is responsible for all costs associated with actions taken under subsection (3).  
16 Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3)  
17 unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner  
18 who is determined to be without fault.

19           (6) A court may not suspend or defer imposition of penalties provided by this section."  
20

21           **Section 13.** Section 61-8-402, MCA, is amended to read:

22           **"61-8-402. Blood or breath tests for alcohol, drugs, or both.** (1) A person who operates or is in  
23 actual physical control of a vehicle upon ways of this state open to the public is considered to have given  
24 consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount  
25 or detected presence of alcohol or drugs in the person's body.

26           (2) (a) The test or tests must be administered at the direction of a peace officer when:

27           (i) the officer has reasonable grounds to believe that the person has been driving or has been in actual  
28 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol,  
29 drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

30           (ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

1 (iii) the officer has probable cause to believe that the person was driving or in actual physical control of  
2 a vehicle in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision  
3 resulting in property damage, bodily injury, or death.

4 (b) The arresting or investigating officer may designate which test or tests are administered.

5 (3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of  
6 refusal is considered not to have withdrawn the consent provided by subsection (1).

7 (4) If an arrested person refuses to submit to one or more tests requested and designated by the officer  
8 as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the  
9 department, immediately seize the person's driver's license. The peace officer shall immediately forward the  
10 license to the department, along with a report certified under penalty of law stating which of the conditions set  
11 forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to  
12 submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the  
13 department shall suspend the license for the period provided in subsection (6).

14 (5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a  
15 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of  
16 issuance, and shall provide the driver with written notice of the license suspension or revocation and the right  
17 to a hearing provided in 61-8-403.

18 (6) ~~(a) The~~ Except as provided in subsection (6)(b), the following suspension and revocation periods  
19 are applicable upon refusal to submit to one or more tests:

20 ~~(a)(i)~~ upon a first refusal, a suspension of 6 months with no provision for a restricted probationary  
21 license;

22 ~~(b)(ii)~~ upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the  
23 records of the department, a revocation of 1 year with no provision for a restricted probationary license.

24 (b) If a person who refuses to submit to one or more tests under this section is the holder of a  
25 commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges,  
26 the department shall:

27 (i) upon a first refusal, suspend the person's commercial driver's license for a one-year period; and

28 (ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life,  
29 subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person  
30 is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior

1 conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same  
 2 effect as a previous testing refusal for purposes of this subsection (6)(b).

3 (7) A nonresident driver's license seized under this section must be sent by the department to the  
 4 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or  
 5 more tests.

6 (8) The department may recognize the seizure of a license of a tribal member by a peace officer acting  
 7 under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating  
 8 a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation  
 9 requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred  
 10 within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department  
 11 under this subsection is not reviewable under 61-8-403.

12 (9) A suspension under this section is subject to review as provided in this part.

13 (10) This section does not apply to blood and breath tests, samples, and analyses used for purposes  
 14 of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an  
 15 offense not in this part."

16

17 **Section 14.** Section 61-8-802, MCA, is amended to read:

18 **"61-8-802. Suspension of commercial driver's license -- disqualification.** (1) ~~Except as provided~~  
 19 ~~in subsection (3), if the department receives notice from a court or from another licensing jurisdiction that a~~  
 20 ~~person holding a commercial driver's license has been convicted of any offense or conduct requiring driver~~  
 21 ~~disqualification under 49 U.S.C. 31310 or 49 CFR 383.51~~ Upon receipt of a report of a major offense committed  
 22 by a person who holds a commercial driver's license or a person required to have a commercial driver's license,  
 23 the department shall suspend the person's commercial driver's license:

24 (a) ~~upon notice receipt of a report of a first conviction major offense,~~ for 1 year, except that if the major  
 25 offense occurred while operating a commercial motor vehicle transporting placardable hazardous material, the  
 26 suspension must be for 3 years; or

27 (b) ~~upon notice receipt of a report of a second conviction of the same offense or conduct or subsequent~~  
 28 major offense arising from an incident that is separate from the prior major offense, for life, subject to department  
 29 rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible,  
 30 upon completion of a minimum suspension period of 10 years.

1           ~~(2) The department is required by federal law to suspend a person's commercial driver's license upon~~  
 2 ~~the report of~~ For purposes of this section, the term "major offense" refers to a refusal to take a test under an  
 3 implied consent law or a conviction of or forfeiture of bail not vacated for any of the following offenses or  
 4 conduct:

5           ~~(a) operating a commercial~~ driving or being in actual physical control of a motor vehicle while under the  
 6 influence of alcohol, or a controlled substance a drug, or a combination of the two;

7           ~~(b)~~ driving or being in actual physical control of:

8           ~~(i)~~ a noncommercial motor vehicle and having an alcohol concentration of 0.10 or more; or

9           ~~(ii)~~ a commercial motor vehicle and having an alcohol concentration of 0.04 or more;

10          ~~(b)(c)~~ leaving the scene of an accident involving a commercial motor vehicle operated by the person  
 11 death or personal injury or failing to give information and render aid;

12          ~~(e)(d)~~ using a commercial motor vehicle in the commission of a felony, other than a felony under  
 13 61-8-804;

14          ~~(d)(e)~~ operating a commercial motor vehicle while the person's commercial driver's license is revoked,  
 15 suspended, or canceled or the person is disqualified from operating a commercial motor vehicle; or

16          ~~(e)(f)~~ causing a fatality through negligent or criminal operation of a commercial motor vehicle; or

17          ~~(f)~~ committing one of the following railroad grade crossing violations:

18          ~~(i)~~ for drivers who are not required to always stop:

19          ~~(A)~~ failing to slow down and check that the tracks are clear of an approaching train; or

20          ~~(B)~~ failing to stop before reaching the crossing if the tracks are not clear;

21          ~~(ii)~~ for drivers who are always required to stop, failing to stop before driving onto the crossing;

22          ~~(iii)~~ for all drivers:

23          ~~(A)~~ failing to have sufficient space to drive completely through the crossing without stopping;

24          ~~(B)~~ failing to obey a traffic control device or the directions of an enforcement official at the crossing; or

25          ~~(C)~~ failing to negotiate a crossing because of insufficient undercarriage clearance.

26          ~~(3) The department shall suspend the commercial driver's license of a person who is convicted of a~~  
 27 railroad grade crossing violation for:

28          ~~(a)~~ 60 days upon a first conviction;

29          ~~(b)~~ 120 days upon a second conviction within a 3-year period; or

30          ~~(c)~~ 1 year upon a third or subsequent conviction within a 3-year period.

1 ~~\_\_\_\_\_ (4) A person whose commercial driver's license is suspended under this section:~~  
 2 ~~\_\_\_\_\_ (a) is not eligible for a restricted probationary driver's license; and~~  
 3 ~~\_\_\_\_\_ (b) may not operate a commercial motor vehicle until the suspension is lifted and the person's~~  
 4 ~~commercial driver's license is restored."~~

5

6 **Section 15.** Section 61-8-803, MCA, is amended to read:

7 **"61-8-803. Suspension of commercial driver's license -- serious traffic violations.** (1) If the  
 8 department receives notice from a court or another licensing jurisdiction that a person holding or required to hold  
 9 a commercial driver's license has been convicted of more than one serious traffic violation in separate incidents  
 10 within a 3-year period, the department shall suspend the person's commercial driver's license:

11 (a) for 60 days upon receipt of notice of the second conviction; or

12 (b) for 120 days upon receipt of notice of the third or subsequent conviction.

13 (2) For purposes of this section, "serious traffic violation" means conviction, when operating a  
 14 commercial motor vehicle or, with respect to subsections (2)(a) through (2)(e), when operating either a  
 15 commercial or a noncommercial motor vehicle, of:

16 (a) speeding in excess of 15 miles an hour above a posted speed limit;

17 (b) reckless driving;

18 (c) improper or erratic traffic lane changes;

19 (d) following too closely;

20 (e) a violation of a state law or local ordinance relating to the operation of a motor vehicle, excluding  
 21 a parking, weight, or equipment violation, that arises in connection with a fatal accident;

22 (f) operating a commercial motor vehicle without a commercial driver's license;

23 (g) operating a commercial motor vehicle without a commercial driver's license in one's possession or  
 24 refusing to display a commercial driver's license upon request; or

25 (h) operating a commercial motor vehicle ~~when the minimum testing standards for the class of vehicle~~  
 26 ~~operated or the type of cargo carried have not been satisfied by the individual~~ without the proper class of  
 27 commercial driver's license or endorsements, or both, for the specific vehicle type or types being operated or  
 28 for the passengers or type or types of cargo being transported."

29

30 **Section 16.** Section 61-8-804, MCA, is amended to read:



1           **"61-8-804. Suspension of commercial driver's license -- felony involving a controlled substance**  
2 **while driving a commercial vehicle.** If the department receives information that a ~~commercial motor vehicle~~  
3 ~~operator~~ person who holds or is required to hold a commercial driver's license has been convicted of using a  
4 commercial or noncommercial motor vehicle in the commission of a felony involving the manufacture,  
5 distribution, or dispensing of a controlled substance, as defined by federal regulations, or a felony involving  
6 possession with intent to manufacture, distribute, or dispense a controlled substance, the department shall  
7 suspend the ~~operator's~~ person's commercial driver's license for life and may not reinstate the license at any time  
8 for any reason."

9

10           **Section 17.** Section 61-8-805, MCA, is amended to read:

11           **"61-8-805. Suspension for operating commercial vehicle with alcohol concentration of 0.04 or**  
12 **more -- hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in actual  
13 physical control of a commercial motor vehicle is subject to the suspension of the person's commercial driver's  
14 license. The peace officer who determines that the person is operating a commercial motor vehicle with an  
15 alcohol concentration of 0.04 or more shall immediately seize the person's commercial driver's license and, on  
16 behalf of the department, give the person written notice of the license suspension and the right to a hearing  
17 under 61-8-808. Upon receipt of a report certified under penalty of law from the peace officer that the person  
18 was operating a commercial motor vehicle with an alcohol concentration of 0.04 or more, the department shall  
19 suspend the license, with no provision for a restricted probationary commercial license, for:

20           (a) 1 year, upon receipt of the first report of a 0.04 or more alcohol concentration violation, except that  
21 if the violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the  
22 suspension must be for 3 years; and

23           (b) life, upon receipt of a second or subsequent 0.04 or more alcohol concentration violation report at  
24 any time as determined from the records of the department, subject to federal rules allowing for driver  
25 rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years'  
26 suspension.

27           (2) A peace officer who determines that a commercial motor vehicle operator has a measured amount  
28 or detected presence of alcohol in the operator's body while operating a commercial motor vehicle shall place  
29 the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

30           (3) The fact that a person charged with a violation of the provisions of subsection (1) is entitled to use

1 alcohol under the laws of Montana is not a defense against a charge of violating the provisions of subsection  
2 (1).

3 (4) For purposes of this section, a conviction for violation of 61-8-401 or 61-8-406 while operating a  
4 commercial motor vehicle or a prior refusal to be tested under an implied consent law must be treated as a prior  
5 report of a 0.04 or more alcohol concentration violation and must be used in determining the length of the license  
6 suspension under subsection (1)."

7

8 **Section 18.** Section 61-8-806, MCA, is amended to read:

9 **"61-8-806. Blood and breath tests of commercial vehicle operators -- procedure -- suspension.**

10 (1) A person who operates a commercial motor vehicle upon the ways of this state open to the public is  
11 considered to have given consent to one or more tests of the person's blood or breath for the purpose of  
12 determining a measured amount or detected presence of alcohol in the person's body if the person is requested  
13 to submit to the test or tests by a peace officer who has reasonable grounds to believe that the person was  
14 driving or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public  
15 while having a measured alcohol concentration or detected presence of alcohol. The peace officer may  
16 designate the blood or breath test or tests to be administered and may request that the person submit to a  
17 preliminary alcohol screening test before a blood, breath, or urine test is taken.

18 (2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have  
19 withdrawn the consent provided in subsection (1).

20 (3) If a person refuses to submit to one or more tests designated by the officer, the test or tests may not  
21 be given, but the officer shall immediately seize the person's commercial driver's license and forward the license  
22 to the department, along with a report certified under penalty of law that the officer had reasonable grounds to  
23 believe that the person was driving or was in actual physical control of a commercial motor vehicle upon ways  
24 of this state open to the public while having a measurable alcohol concentration or detected presence of alcohol  
25 and that the person had refused to submit to one or more tests upon the request of the officer. Upon receipt of  
26 the report, the department shall suspend the license for a period provided in subsection (5).

27 (4) Upon seizure of a person's commercial driver's license, the peace officer shall issue, on behalf of  
28 the department, a temporary 5-day noncommercial driving permit, effective 12 hours after the time of issuance,  
29 and shall provide the person with written notice of the license suspension and the right to a hearing under  
30 61-8-808.

1 (5) Upon receipt of the officer's certified report, the department shall suspend the person's commercial  
2 driver's license, with no provision for a restricted probationary commercial driver's license, for:

3 (a) 1 year, upon a first refusal, except that if the violation occurred in a commercial motor vehicle  
4 transporting placardable hazardous materials, the suspension for a first refusal must be for 3 years;

5 (b) life, upon a second or subsequent refusal at any time as determined from the records of the  
6 department, subject to department rules adopted to implement federal rules allowing for driver rehabilitation and  
7 license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension. If the  
8 person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the  
9 conviction has the same effect as a previous testing refusal for purposes of this subsection (5)(b)."  
10

11 **Section 19.** Section 61-11-102, MCA, is amended to read:

12 **"61-11-102. Records to be kept by the department.** (1) The department shall file every application  
13 for a driver's license received by it and shall maintain suitable indexes containing, in alphabetical order:

14 (a) all applications denied and on each ~~thereof~~ ~~note~~ the reasons for ~~such~~ denial;

15 (b) all applications granted; and

16 (c) the name of ~~every~~ each licensee whose license has been suspended or revoked by the department  
17 and after each ~~such~~ name ~~note~~ the reasons for ~~such~~ the action.

18 (2) (a) The department shall also file all accident reports and abstracts of court records of convictions  
19 received by it under the laws of this state, ~~and in connection therewith~~. The department shall maintain convenient  
20 ~~records or make suitable notations in order~~ a manner that allows an individual record of each licensee, showing  
21 the convictions of ~~such~~ the licensee and certain traffic accidents in which ~~he~~ the licensee has been involved,  
22 ~~shall~~ The records must be readily ascertainable and available for the consideration of the department upon any  
23 application for renewal of a license and at other suitable times. ~~No~~ A record of involvement in a traffic accident  
24 may not be entered on a licensee's record unless ~~he~~ the licensee was convicted, as defined in 61-11-203, for  
25 an act causally related to the accident.

26 (b) If the department receives notice that a licensee has been disqualified by the federal motor carrier  
27 safety administration as an imminent hazard under 49 CFR 383.52, the department shall record the  
28 disqualification on the licensee's record.

29 (3) The department is further authorized, upon receiving a record of the conviction in this state of a  
30 nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward a

1 certified copy of ~~such~~ the record to the motor vehicle administrator in the state ~~wherein~~ in which the person ~~so~~  
2 ~~convicted~~ is a resident.

3 (4) The department may photograph, microphotograph, photostat, or reproduce on film any of its  
4 records. The film or reproducing material must be durable, and the device used to reproduce the records on the  
5 film or material must accurately reproduce and perpetuate the original records. ~~Such a~~ A photograph,  
6 microphotograph, photostatic copy, or photographic film of the original record is an original record for all  
7 purposes and is admissible in evidence in all courts or administrative agencies. A facsimile, exemplification, or  
8 certified copy of the original record is a transcript of the original for purposes stated in this section.

9 (5) The department may place on a computer storage device the information contained on original  
10 records or reproductions of original records made pursuant to this section. Signatures on records ~~need~~ are not  
11 required to be placed on a computer storage device.

12 (6) A reproduction of the information placed on a computer storage device is an original of the record  
13 for all purposes and is admissible in evidence without further foundation in all courts or administrative agencies  
14 when the following certification by a custodian of the record appears on each page:

15 The individual named below, being a ~~duly~~ designated custodian of the driver records of the department  
16 of justice, motor vehicle division, certifies this document as a true reproduction, in accordance with 61-11-102(6),  
17 of the information contained in a computer storage device of the department of justice, motor vehicle division.

18 Signed: .....

19 (Print Full Name)"

20

21 NEW SECTION. Section 20. Repealer. Section 61-5-117, MCA, is repealed.

22

23 NEW SECTION. Section 21. Codification instruction. (1) [Section 1] is intended to be codified as  
24 an integral part of Title 61, chapter 1, part 1, and the provisions of Title 61 apply to [section 1].

25 (2) [Sections 2 and 3] are intended to be codified as an integral part of Title 61, chapter 8, part 8, and  
26 the provisions of Title 61 apply to [sections 2 and 3].

27

28 NEW SECTION. SECTION 22. COORDINATION INSTRUCTION. IF SENATE BILL NO. 13 AND [THIS ACT] ARE BOTH  
29 PASSED AND APPROVED, THEN THE NUMBER 0.10 IN [SECTION 14(2)(B)(I)], AMENDING 61-8-802, MUST BE REPLACED BY  
30 THE NUMBER 0.08.



1  
2 ~~NEW SECTION. Section 22. Effective dates.~~ (1) Except as provided in subsection (2), ~~[this act] is~~  
3 ~~effective on October 1, 2003.~~

4 ~~(2) [Sections 4 through 6 and this section] are effective on passage and approval.~~

5  
6 NEW SECTION. Section 23. Applicability. (1) [Sections 4 through 6] apply to the operation of a  
7 commercial motor vehicle on or after ~~[the effective date of sections 4 through 6]~~ OCTOBER 1, 2003.

8 (2) [Sections 1 and 7 through 11] apply to a driver's license issued or renewed on or after October 1,  
9 2003.

10 (3) [Sections 2, 3, and 12 through 19] apply to conduct or offenses that occur on or after October 1,  
11 2003.

12 - END -