

HOUSE BILL NO. 566

INTRODUCED BY S. MENDENHALL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT FEDERALLY MANDATED DRUG AND
5 ALCOHOL TESTS OF COMMERCIAL MOTOR VEHICLE OPERATORS BE REPORTED TO THE
6 DEPARTMENT OF JUSTICE IF THE TEST RESULTS ARE POSITIVE; REQUIRING THAT A REFUSAL TO
7 SUBMIT TO DRUG OR ALCOHOL TESTING BE REPORTED AND TREATED AS A POSITIVE TEST RESULT;
8 REQUIRING THE DEPARTMENT OF JUSTICE TO SUSPEND A COMMERCIAL DRIVER'S LICENSE UPON
9 RECEIPT OF A REPORT OF A POSITIVE DRUG OR ALCOHOL TEST; PROVIDING FOR A HEARING UPON
10 SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE AND PROVIDING PARAMETERS FOR THE
11 HEARING; ALLOWING A PERSON WHOSE LICENSE HAS BEEN SUSPENDED TO PETITION THE
12 DISTRICT COURT FOR REVIEW OF THE SUSPENSION; PROVIDING THAT, UNDER CERTAIN
13 CIRCUMSTANCES, A SUSPENSION IS NOT IN EFFECT WHILE A HEARING OR REVIEW BY A DISTRICT
14 COURT IS PENDING; ALLOWING THE DEPARTMENT OF JUSTICE TO ADOPT RULES REGARDING THE
15 HEARING PROCESS AND OTHER PROVISIONS OF THE SUSPENSION PROCESS; REQUIRING A LICENSE
16 SUSPENSION TO REMAIN IN EFFECT UNTIL A PERSON HAS UNDERGONE DRUG AND ALCOHOL
17 ASSESSMENT AND TREATMENT; LIMITING GOVERNMENTAL LIABILITY; AND REQUIRING THAT A
18 COMMERCIAL DRIVER'S LICENSE BE PERMANENTLY SUSPENDED UNDER CERTAIN
19 CIRCUMSTANCES."

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21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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23 NEW SECTION. **Section 1. Commercial motor vehicle operator alcohol and drug testing --**
24 **reporting of results required -- definitions.** (1) As used in [sections 1 and 2], the following definitions apply:

25 (a) "Commercial motor vehicle operator employer" means a person or entity who employs operators
26 of commercial motor vehicles and who is required to have an alcohol and drug testing program under 49 CFR
27 382 that is conducted under the procedures established in 49 CFR 40.

28 (b) "Breath alcohol technician" means a person who is qualified to perform services related to the
29 federal department of transportation's alcohol testing program under 49 CFR 40.213.

30 (c) "Medical review officer" means a person who is qualified to perform services related to the federal

1 department of transportation drug testing program under 49 CFR 40.121.

2 (d) "Positive alcohol confirmation test" means:

3 (i) an alcohol confirmation test that has been conducted by a breath alcohol technician under the
4 provisions of 49 CFR 40; and

5 (ii) an alcohol confirmation test that indicates an alcohol concentration of 0.04 or more.

6 (e) "Substance abuse professional" means an alcohol and drug specialist who meets the requirements
7 of 40 CFR 40.281.

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

10 (i) indicates a drug concentration at or above the cutoff concentration established under 49 CFR 40.87;
11 and

12 (ii) has undergone review and final determination by a medical review officer.

13 (2) A medical review officer or breath alcohol technician hired by or under contract to a commercial
14 motor vehicle operator employer shall report to the department a finding of a Montana-licensed commercial
15 motor vehicle operator's verified positive drug test or positive alcohol confirmation test.

16 (3) A commercial motor vehicle operator employer shall report to the department a refusal by a
17 commercial motor vehicle operator to take a drug or alcohol test, under circumstances that constitute a refusal
18 to test under 49 CFR part 40.191, if the refusal has not been reported by a medical review officer or breath
19 alcohol technician.

20 (4) A commercial motor vehicle operator employer shall make it a written condition of any contract
21 entered into with a medical review officer or breath alcohol technician, regardless of the state where the officer
22 or technician is located, that the officer or technician is required to make reports to the department regarding
23 Montana-licensed commercial motor vehicle operators as provided in [section 2 (1)]. Failure to obtain the
24 contractual condition or agreement is punishable by a fine of not more than \$100 for each violation.

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26 **NEW SECTION. Section 2. Suspension of commercial driver's license -- report of positive drug**
27 **or alcohol test -- hearing -- duration of suspension.** (1) (a) When the department receives a report from a
28 medical review officer, breath alcohol technician, or commercial motor vehicle employer that a Montana-licensed
29 commercial motor vehicle operator has had a verified positive drug test or positive alcohol confirmation test or
30 has refused to take a drug or alcohol test conducted under the procedures established in 49 CFR 40, the

1 department shall suspend the operator's commercial driver's license, subject to a hearing as provided in this
2 section.

3 (b) The department shall notify the commercial motor vehicle operator of the suspension in writing by
4 mail.

5 (c) The notice required in subsection (1)(b) must explain the procedure for hearing.

6 (2) A person who has received a notice of suspension as provided in subsection (1) may request a
7 hearing to challenge the suspension within 20 days from the date that the notice is postmarked. If a request for
8 a hearing is mailed to the department, it must be postmarked within 20 days after the department has given
9 notice of the license suspension.

10 (3) The hearing must be conducted in the county where the person whose license has been suspended
11 resides, but the department may conduct all or part of the hearing by telephone or other electronic means.

12 (4) The hearing must be limited to the following issues:

13 (a) whether the person whose license has been suspended is the subject of the report referenced in
14 subsection (1);

15 (b) whether the commercial motor vehicle operator employer has a program that is subject to the federal
16 requirements under 49 CFR 40;

17 (c) whether the medical review officer or breath alcohol technician making the report accurately followed
18 the protocols for testing established to certify the results or, in the event of a report of a person refusing to take
19 a drug or alcohol test, whether the circumstances constitute the refusal of a test under the provisions of 49 CFR
20 40.191; and

21 (d) the possibility of false positive test results. Evidence may be presented at the hearing that
22 demonstrate false positive test results.

23 (5) For the purposes of a hearing as provided in this section, a copy of a positive test result with a
24 declaration by the medical review officer or breath alcohol technician stating the accuracy of the laboratory
25 protocols that were followed to arrive at the test result is prima facie evidence:

26 (a) of a verified positive drug test or a positive alcohol confirmation test result;

27 (b) that the commercial motor vehicle operator employer has a program that is subject to the federal
28 requirements under 49 CFR 40; and

29 (c) that the medical review officer or breath alcohol technician making the report accurately followed
30 the protocols for testing established to certify the results.

1 (6) Following the hearing, the department shall determine whether the suspension may be rescinded
2 or sustained. If the suspension is sustained, the person whose commercial driver's license is suspended may
3 file a petition for review of the final suspension order with the district court in the county where the person
4 resides.

5 (7) If a person whose commercial driver's license has been suspended under this section does not
6 request a hearing within the 20-day time limit or if the person fails to appear at a hearing, the person has waived
7 the right to a hearing and the license suspension must be sustained.

8 (8) A suspension of a commercial driver's license under this section is not in effect while a formal
9 hearing or subsequent appeal to district court is pending, provided that:

10 (a) the person whose commercial driver's license suspension is the subject of the hearing or appeal is
11 not convicted of a moving violation or cited for a traffic infraction while operating a commercial motor vehicle;
12 and

13 (b) the department receives no additional reports during the period that the hearing or appeal is pending
14 of the person having had a verified positive drug test or positive alcohol confirmation test.

15 (9) The department may adopt rules specifying additional requirements for requesting and conducting
16 a hearing under this section and may adopt any other rules necessary for carrying out the provisions of this
17 section.

18 (10) The department is not civilly liable for damage resulting from suspending a commercial driver's
19 license as a result of a report of a verified positive drug test or positive alcohol confirmation test result or for
20 damage resulting from release of the test result information occurring in the normal course of business in
21 complying with the provisions of this section.

22 (11) (a) A suspension of a commercial driver's license under this section remains in effect until the
23 person whose license has been suspended:

24 (i) undergoes a drug and alcohol assessment by a substance abuse professional;

25 (ii) presents evidence of satisfactory participation in or successful completion of a drug or alcohol
26 treatment or education program as recommended by the substance abuse professional; and

27 (iii) pays a reinstatement fee of \$100 to the department for reinstatement of the license.

28 (b) The substance abuse professional shall forward to the department the person's diagnostic
29 evaluation and treatment recommendation, which the department shall use in determining whether the person
30 is eligible for reinstatement.

