EXHIBIT 1
DATE 2/2/09
HB HB 298

FLATHEAD COUNTY JUSTICE COURT

David M. Ortley
Justice of the Peace
Mark R. Sullivan
Justice of the Peace

Flathead County Justice Center
800 South Main
Kalispell, Montana 59901
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January 31, 2009

The Honorable Ron Stoker, Chair
Members of the House Judiciary Committee
PO Box 200400
Helena, MT 59260-0400

Re: HB-298

Chairman Stoker and Committee Members:

I write in support of HB-298, as sponsored by Representative Blewett. Without passage of this bill the judges in the City, Municipal, and Justices' courts across this state will continue to denied the ability to exercise judicial discretion in sentencing traffic offenders and administer justice. In my nine year tenure as a judge perhaps no other piece of legislation has so adversely affected the courts of limited jurisdiction, or the citizens of Montana who do not hold a Commercial Drivers License (CDL) and whom appear before judges on minor traffic offenses, as the amendments made in the 2005 legislative session to the Title 61 provisions governing driver's records and the reporting of convictions to the Department of Motor Vehicles.

As a member of the Supreme Court Commission on Courts of Limited Jurisdiction I am actively involved in judicial education in this state. For the last three and a half years I have had an opportunity to speak with judges from all over the state as we have wrestled with this issue. With few exceptions those judges, and the Montana Magistrate's Association, were opposed to the previous amendment, and remain steadfastly opposed to the current law.

Under present law, with the exception of a parking violation, a judge is prohibited from taking any action which would result in a conviction for a traffic offense from appearing on any driver's driving record. Stated another way, no matter how good your driving record is, no matter the circumstances giving rise to the ticket, and no matter your age, your conviction will appear on your driving record. This is the single most important question on the minds of the hundreds of people who appear before me on minor traffic offenses and are concerned about their clean record, or the insurance ramifications of their ticket.

HB-298 represents a return to a common sense approach to sentencing minor traffic offenders and restores discretion to the sentencing judge. Equally important, the bill before you restores the original intent of the bill passed in the 2005 Session: **to ensure Montana's compliance with the requirements of the Federal Motor Carrier Safety Regulations as they relate to Commercial Drivers Licensing.**

The 2005 amendment, in language much broader than that required by the Federal Motor Carrier Safety Administration, mandates the reporting of all "points" to the Records and Driver Control Bureau of the Montana Department of Justice.
The intent of the Bill was to require that violations of those holding a CDL appear on the driving record. (See attached "A"). *The Quick Guide To HB 192 Proposed Changes* reflects that the intent of the legislation was to conform Montana's CDL laws to the federal requirements. (See attached Exhibit "B"). Federal law did not and does not require that the points of all drivers be reported and included on their driving record.

Under Montana law all moving traffic violations carry a minimum of two "points." The law currently prohibits **any action** on the part of a court that would result in the failure to report a conviction so that "points" may be assessed and placed on the driver's record. Simply stated, the 2005 legislation eviscerated judicial discretion, and resulted in complete chaos in the courts of limited jurisdiction. This resulted from the mandatory assessment of "points" on the driving record of thousands of motorists who clearly deserved the benefit of a deferred sentence, and the avoidance of the ramifications that inevitably flow from points appearing on the driver's record.

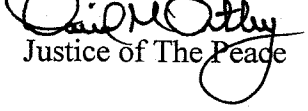
The Federal Motor Carrier Safety Regulations are comprehensive set of regulations governing commercial trucks and the operators of those trucks. The regulations also govern state licensing of commercial drivers and mandate compliance with those regulations to ensure uniformity in inter-state commerce. They do not and are not intended to apply to the general motoring public. A state's failure to comply with the regulations can result in severe monetary sanctions through withholding of Federal-aid highway funds. (See attached Exhibit "C"). A state must maintain a record of all traffic convictions of those drivers holding a CDL. (See attached Exhibit "D"). A state commercial driver's licensing program may not take any action that would result in a CDL driver's conviction from appearing on the driver's record irrespective of where the driver is licensed. (See attached Exhibit "E"). This is what the 2005 amendment was meant to prevent.

In the fall of 2006 I attended a Faculty Development program at the National Judicial College in Reno. I spent four days studying the Federal Motor Carrier Safety Regulations, and preparing to return to Montana to instruct judges, prosecutors, and law enforcement officers in this complex area. The operation of commercial vehicles, and possession of a CDL, implicates safety issues that are not normally associated with passenger vehicles. Those issues warrant handling convictions differently when the violation is committed by the holder of a CDL, or someone operating a commercial vehicle the operation of which requires that person possess a CDL.

The amendments proposed in HB-298 represent a reasonable balance between the legitimate interest of the state and federal government as they relate to the operation of commercial vehicles and those drivers who have sought and obtained a CDL, and private citizens who carry automobile insurance and pride themselves in maintaining a clean driving record.

The judges of this state should be vested with the discretion to administer justice, and in the exercise of their discretion, defer the assessment of points where appropriate, and under the conditions deemed appropriate by the court. This bill reinstates this fundamental principle. I personally, and on behalf of the Montana Magistrate's Association, strongly support this bill and urge that your committee do the same.

Sincerely,



Justice of The Peace

MCA; REPEALING SECTIONS 61-8-809, 61-8-810, AND 61-8-811, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

AN ACT REVISING LAWS GOVERNING COMMERCIAL DRIVER'S LICENSES TO COMPLY WITH REGULATIONS ISSUED BY THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION AND THE TRANSPORTATION SECURITY ADMINISTRATION OF THE DEPARTMENT OF HOMELAND SECURITY; PROHIBITING THE DEPARTMENT OF JUSTICE FROM ISSUING, TRANSFERRING, OR RENEWING A HAZARDOUS MATERIALS ENDORSEMENT UNLESS CERTAIN CONDITIONS ARE MET; REQUIRING A SEPARATE APPLICATION AND FINGERPRINT-BASED BACKGROUND CHECK FOR A HAZARDOUS MATERIALS ENDORSEMENT; REQUIRING REVOCATION OR REMOVAL OF A PERSON'S HAZARDOUS MATERIALS ENDORSEMENT TO A COMMERCIAL DRIVER'S LICENSE UNDER CERTAIN CIRCUMSTANCES; REQUIRING A PERSON WHOSE HAZARDOUS MATERIALS ENDORSEMENT IS REVOKED TO SURRENDER THE PERSON'S COMMERCIAL DRIVER'S LICENSE AND OBTAIN A REPLACEMENT LICENSE WITHOUT THE ENDORSEMENT; REQUIRING THE DEPARTMENT TO KEEP RECORDS OF REVOCATIONS ANDDISQUALIFICATIONS; PROHIBITING AN EMPLOYER FROM PERMITTING THE OPERATION OF A COMMERCIAL MOTOR VEHICLE IN VIOLATION OF STATE LAW OR FEDERAL REGULATION AND PROVIDING PENALTIES; SPECIFYING WHEN SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE
OR DISQUALIFICATION COMMENCES; REQUIRING THE DEPARTMENT TO NOTIFY OTHER STATES OF TRAFFIC VIOLATIONS; SPECIFYING THAT A VEHICLE USED FOR MILITARY PURPOSES IS NOT A COMMERCIAL MOTOR VEHICLE; REVISING THE DEFINITION OF "HAZARDOUS MATERIALS"; REVISING THE CONDITIONS UNDER WHICH THE DEPARTMENT MAY ISSUE A COMMERCIAL DRIVER'S LICENSE TO A NONRESIDENT; PROHIBITING THE DEPARTMENT FROM ISSUING A NONCOMMERCIAL DRIVER'S LICENSE TO A NONRESIDENT; REVISING THE CONDITIONS UNDER WHICH THE DEPARTMENT MAY RENEW A DRIVER'S LICENSE BY MAIL; PROVIDING SEPARATE EXPIRATION PROVISIONS FOR COMMERCIAL DRIVER'S LICENSES; REVISING THE PENALTIES FOR OPERATION OF AN OUT-OF-SERVICE VEHICLE; **REQUIRING THAT CERTAIN VIOLATIONS APPEAR ON THE DRIVING RECORD OF A PERSON WHO HOLDS A COMMERCIAL DRIVER'S LICENSE;** AMENDING SECTIONS 15-1-501, 19-6-401, 19-6-404,
44-1-1005, 61-1-134, 61-1-137, 61-1-505, 61-5-103, 61-5-104, 61-5-105, 61-5-107, 61-5-110, 61-5-111, 61-5-112, 61-5-114, 61-5-119, 61-5-121, 61-5-125, 61-5-201, 61-5-213, 61-8-725, 61-8-802, 61-8-803, 61-8-807, 61-8-812, 61-11-101, 61-11-102, AND 61-11-203, MCA; REPEALING SECTIONS 61-8-809, 61-8-810, AND 61-8-811, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY
DATE.

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

A

SENATE HIGHWAYS AND TRANSPORTATION
EXHIBIT NO. 1
DATE: 3/10/05
BILL NO. HB 192

QUICK GUIDE TO HB 192 PROPOSED CHANGES
Conform Commercial Driver Licensing Laws to Federal Requirements

FMCSA AUDIT CHANGES

Sec. 3, 30: Authorizes civil penalty impositions against employer or driver for certain violations – creates employer offense for knowingly allowing driver to operate without CDL, while CDL suspended or disqualified, out-of-service order or violate railroad crossing provisions

Sec. 4, 28: Clarifies when CDL suspensions start and how window for serious traffic violation is determined

Sec. 5, 31: Requires timely notification to other states of Montana convictions by out-of-state drivers and clarifies when convictions become final for reporting

Sec. 9, 25, 33: Conforms conviction definition for driver licensing and recordkeeping purposes to federal standard

Sec. 10: Clarifies commercial motor vehicle definition re: farmers, military and school bus

Sec. 13, 15: Authorizes issuance of CDL to nonresidents in limited circumstances; prohibits issuance in all other situations

Sec. 14: Moves current language from 61-5-129 and exempts federal district of Mexico CDLs

Sec. 15, 16, 24: Treats cancellations the same as suspensions and revocations; adds cancellation to status that must be disclosed upon application; incorporates 60-day CDL disqualification following cancellation due to omitted info or fraud on application

Sec. 17: Clarifies road test must be performed in representative vehicle; recognizes third-party testing processes already in current law

Sec. 26: Limits recordkeeping violation for speeding tickets to Montana convictions, unless driver has CDL

Sec. 27: Clarifies that DOJ will recognize out-of-state testing refusals or .08 or more administration determinations as applied to a person required to have a CDL

HAZ MAT CHANGES:

Sec. 1: TSA background checks required for new, renewed or transferred hazardous materials endorsements (HMEs)

Secs. 2, 12, 20: Authority to revoke HME if security threat assessment determined or driver surrenders HME; requires issuance of replacement license if HME revoked or surrendered; conforms cancellation process to HME requirements

Secs. 10, 11: Revises commercial motor vehicle and hazardous materials definitions to conform to federal regulations

Sec. 18: Changes CDL term from 8 years to 5 years to conform to maximum term of TSA security threat assessment; prohibits mail renewals for CDLs with HME

Sec. 19: Incorporates security threat assessment process into DOJ rule-making authority

MINOR CHANGES:

Sections 6,7,8, 21, 22, 23, 29 are cross-reference or coordination amendments

Repealed sections are redundant – covered in 61-8-802

Severability clause included as a preventative measure – uncertainty of reaction to TSA background check implementation

DEPARTMENT OF JUSTICE
HB 192: Revision of Commercial Driver Licensing to Conform to Federal Mandates

Background
The Department of Justice, Motor Vehicle Division administers Montana's commercial driver licensing program. However, the program must meet the standards and requirements set forth in federal regulations adopted by the Federal Motor Carrier Safety Administration of the federal Department of Transportation. These regulations are based on laws passed by Congress.

National Security After 9/11
After the September 11 tragedy, Congress adopted the USA Patriot Act and additional standards requiring background checks for commercial drivers endorsed to transport hazardous materials. On January 13, 2005, the federal Transportation Security Administration (TSA) of the Department of Homeland Security finalized the fee and agent rules governing this background check process.

Penalties for Noncompliance
With one exception pertaining to additional department-proposed amendments noted below, federal law mandates every change now proposed in HB 192.

If Montana's commercial driver licensing program is not brought into substantial compliance with federal standards, trucking companies and truck drivers who operate out of Montana will be negatively impacted, as will the State of Montana. Specifically, the state will:

- ***lose the ability to issue and renew commercial driver licenses*** to Montana drivers, potentially causing Montana trucking companies and drivers to relocate to other states;
- ***lose federal funding*** for the state's motor carrier safety assistance program (MCSAP); and
- ***lose five percent of its federal aid highway funds*** in the fiscal year following the state's first year of noncompliance, and 10 percent of the funds in each year following the state's second or subsequent year of noncompliance.

Hazmat Endorsements
In addition, if Montana does not incorporate the TSA background checks for commercial drivers with hazardous materials (Hazmat) endorsements, the department will be prohibited from issuing Hazmat endorsements to commercial drivers licensed in Montana beginning January 31, 2005, and from renewing Hazmat endorsements beginning May 31, 2005.

Support for HB 192
The Montana Motor Carriers Association and the major trucking companies it represents all support HB 192.

--over--

Proposed Changes

	Section Numbers
USA Patriot Act/TSA background checks for commercial drivers with hazardous materials endorsements (Hazmat)	1, 2, 10-12, 18-20 and 33
Findings from the August, 2003, audit of DOJ's commercial driver licensing program	3-5, 9, 10, 13-17, and 20-32
Coordination amendments	6-8, 21-23, and 29

House Amendments

A subsection requiring new fees for endorsements to commercial driver's licenses was amended out of the bill in committee, with the support of the Motor Vehicle Division (Section 18, page 17, line 14-25). These new fees were not federally mandated.

Effective Dates

- January 31, 2005 – Hazmat background check requirements for new endorsements
- May 31, 2005 – Hazmat background checks for license renewals and transfers
- October 1, 2005 – Remainder of the bill

Additional Department-Proposed Amendments

To correct an unintended consequence of clarifying driver's license fee amounts in current law (Mont. Code Ann. § 61-5-111(6) – p. 17, lines 19-20), the Department is requesting amendments to adjust the driver's license fee distributions in Mont. Code Ann. § 61-5-121 to account for commercial driver's license fees separate from driver's license fees.

These amendments will ensure that the distribution of fees remains revenue-neutral as applied to the two state special revenue funds that are funded in part from driver's license fees, the MHP Retirement Account and the State Traffic Education Account. See, Assumption 8 in HB 192's Fiscal Note, As Amended.

Section

[Code of Federal Regulations]
[Title 49, Volume 4]
[Revised as of October 1, 2003]
From the U.S. Government Printing Office via GPO Access
[CITE: 49CFR384.401]

[Page 951]

TITLE 49--TRANSPORTATION

CHAPTER III--FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 384--STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM--
Table of Contents

Subpart D--Consequences of State Noncompliance

Sec. 384.401 Withholding of funds based on noncompliance.

(a) Following the first year of noncompliance. A State is subject to both of the following sanctions:

(1) An amount equal to five percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's first year of noncompliance under this part.

(2) The Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under section 103(b)(1) of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106-159, 113 Stat. 1754) shall be withheld from a State on the first day of the fiscal year following the fiscal year in which the FMCSA determined that the State was not in substantial compliance with subpart B of this part.

(b) Following second and subsequent year(s) of noncompliance. A State is subject to both of the following sanctions:

(1) An amount equal to ten percent of the Federal-aid funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's second or subsequent year of noncompliance under this part.

(2) The Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under section 103(b)(1) of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106-159, 113 Stat. 1753) shall be withheld from a State on the first day of the fiscal year following the fiscal year in which the FMCSA determined that the State had not returned to substantial compliance with subpart B of this part.
[67 FR 49763, July 31, 2002] [[Page 952]]

C

Section

[Code of Federal Regulations]
[Title 49, Volume 4]
[Revised as of October 1, 2003]
From the U.S. Government Printing Office via GPO Access
[CITE: 49CFR384.225]

[Page 949] TITLE 49--TRANSPORTATION

CHAPTER III--FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 384--STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM--
Table of Contents

Subpart B--Minimum Standards for Substantial Compliance by States

Sec. 384.225 Record of violations.

The State must:

(a) CDL holders. Record and maintain as part of the driver history all convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed in any type of vehicle.

(b) A person required to have a CDL. Record and maintain as part of the driver history all convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed while the driver was operating a CMV.

(c) Make driver history information required by this section available to the users designated in paragraph (e) of this section, or to their authorized agent, within 10 days of:

(1) Receiving the conviction or disqualification information from another State; or

(2) The date of the conviction, if it occurred in the same State.

(d) Retain on the driver history record all convictions, disqualifications and other licensing actions for violations for at least 3 years or longer as required under Sec. 384.231(d).

(e) Only the following users or their authorized agents may receive the designated information:

(1) States--All information on all driver records.

(2) Secretary of Transportation--All information on all driver records.

(3) Driver--Only information related to that driver's record.

(4) Motor Carrier or Prospective Motor Carrier--After notification to a driver, all information related to that driver's, or prospective driver's, record.[67 FR 49762, July 31, 2002]

D

Section

[Code of Federal Regulations]
[Title 49, Volume 4]
[Revised as of October 1, 2003]
From the U.S. Government Printing Office via GPO Access
[CITE: 49CFR384.226]

[Page 949]

TITLE 49--TRANSPORTATION

CHAPTER III--FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 384--STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM--
Table of Contents

Subpart B--**Minimum Standards for Substantial Compliance by States**

Sec. 384.226 Prohibition on masking convictions.

The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.

[67 FR 49762, July 31, 2002]

E