

HOUSE BILL NO. 185
INTRODUCED BY B. WILSON
BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING COMMERCIAL DRIVER LICENSING TO CONFORM WITH REQUIREMENTS OF THE FEDERAL MOTOR CARRIER SAFETY IMPROVEMENT ACT OF 1999 (MCSIA), THE USA PATRIOT ACT, AND THE FEDERAL REGULATIONS IMPLEMENTING MCSIA; DEFINING "NONCOMMERCIAL MOTOR VEHICLE"; REVISING THE DEFINITIONS OF "COMMERCIAL MOTOR VEHICLE" AND "COMMERCIAL DRIVER'S LICENSE"; CLARIFYING THE REQUIREMENTS FOR OPERATION OF A COMMERCIAL MOTOR VEHICLE; REVISING THE REQUIREMENTS GOVERNING THE APPLICATION FOR AND RENEWAL OF A COMMERCIAL DRIVER'S LICENSE; REVISING REQUIREMENTS FOR REQUESTING DRIVING RECORDS FROM A PRIOR STATE OF LICENSURE; REVISING RULEMAKING AUTHORITY OF THE DEPARTMENT OF JUSTICE TO INCLUDE HOMELAND SECURITY INVESTIGATIONS REQUIRED INCIDENT TO THE ISSUANCE, RENEWAL, OR TRANSFER OF A COMMERCIAL DRIVER'S LICENSE; REVISING LICENSE SUSPENSION PERIODS AND COMPUTATION REQUIREMENTS FOR NONCOMMERCIAL AND COMMERCIAL MOTOR VEHICLE IMPLIED CONSENT LAWS; REVISING REQUIREMENTS FOR SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE FOR MAJOR OFFENSES OR FOR CONDUCT OCCURRING WHILE OPERATING A NONCOMMERCIAL MOTOR VEHICLE; CLARIFYING THE REQUIREMENTS FOR SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE FOR A PERSON WHO OPERATES A COMMERCIAL MOTOR VEHICLE WITHOUT A COMMERCIAL DRIVER'S LICENSE OR PROPER ENDORSEMENT OR WHILE THE PERSON'S COMMERCIAL DRIVER'S LICENSE IS SUSPENDED; INCLUDING NONCOMMERCIAL MOTOR VEHICLE OFFENSES IN THE DEFINITION OF "SERIOUS TRAFFIC VIOLATION" AND IN THE LIST OF FELONY-DRUG OFFENSES FOR WHICH SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE IS REQUIRED; AMENDING SECTIONS 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, 61-8-803, 61-8-804, 61-8-805, 61-8-806, AND 61-11-102, MCA; REPEALING SECTION 61-5-117, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES."

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

NEW SECTION. **Section 1. Noncommercial motor vehicle defined.** "Noncommercial motor vehicle"

means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-134 and includes but is not limited to the vehicles listed in 61-1-134(2).

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

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

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

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

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

- (1) is not eligible for a restricted probationary driver's license that would permit operation of a commercial motor vehicle during the period of suspension; and
- (2) may not operate a commercial motor vehicle until the period of suspension is completed and the person is otherwise eligible, under state and federal law, to have the commercial driver's license restored or to reapply for a commercial driver's license.

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

"61-1-134. Commercial motor vehicle defined -- exceptions. (1) Except as provided in subsection (2), "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to

transport passengers or property if the vehicle:

- (a) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
- (b) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;
- (c) is designed to transport at least 16 passengers, including the driver;
- (d) is a school bus as defined in 20-10-101; or
- (e) is of any size and is used to transport any quantity or form of hazardous material required to be placarded pursuant to Title 49, Code of Federal Regulations.

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

- (a) ~~a vehicle exempt from taxation, used for firefighting, and bearing Montana tax-exempt plates;~~
- ~~(b) a police emergency response vehicle~~ an authorized emergency service vehicle:
 - (i) equipped with audible and visual signals as required under 61-9-401 and 61-9-402;
 - (ii) entitled to the exemptions granted under 61-8-107; and
 - (iii) responding to or returning from an emergency call; or
- ~~(c)~~(b) a vehicle:
 - (i) controlled and operated by a farmer, family member of the farmer, or person employed by a the farmer;
 - (ii) used to transport farm products, farm machinery, or farm supplies within Montana ~~or~~ within 150 miles of the farm headquarters or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and
 - (iii) not used to transport goods for compensation or hire.

(3) For purposes of this section:

- (a) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;
- (b) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle; and
- (c) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle."

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

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

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

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

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

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

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

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

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

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

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

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

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, commercial driver's license, or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote,

the department shall accept the registration and forward the form to the election administrator.

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

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

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

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

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

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

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

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

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

"61-5-110. Records check of applicants -- examination of applicants -- cooperative driver testing programs. (1) Prior to examining an applicant for a driver's license, the department shall conduct a check of the applicant's driving record by querying the national driver register, established under 49 U.S.C. 30302, ~~or~~ and the commercial driver's license information system, established under 49 U.S.C. 31309.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain a full-face photograph of the licensee in the size and form prescribed by the department; a distinguishing number issued to the licensee; the full legal name, date of birth, Montana mailing address, and a brief description of the licensee; and either the licensee's customary signature or a digital reproduction of the licensee's customary signature. The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use. A license is not valid until it is signed by the licensee.

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

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

on the highway; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Fees for driver's licenses are:

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

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

(c) commercial driver's license:

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

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

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

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

"61-5-112. Types and classes of commercial driver's licenses -- classification -- rulemaking. The department shall adopt rules that it considers necessary for the safety and welfare of the traveling public governing the classification of commercial driver's licenses and related endorsements and the examination of commercial driver's license applicants and renewal applicants. The rules must:

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

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

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

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

- (5) prescribe the operational and seasonal restrictions for a seasonal commercial driver's license; ~~and~~
- (6) prescribe the requirements for the medical statement that must be submitted in order for a person to be qualified for a type 2 commercial driver's license;
- (7) prescribe the minimum standards for certification of a third-party commercial driver testing program and any test waiver under 61-5-118; and
- (8) provide for any homeland security investigation required under federal law incident to the issuance, renewal, upgrade, or transfer of a commercial driver's license or related endorsement."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(b)~~(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the

records of the department, a revocation of 1 year with no provision for a restricted probationary license.

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

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

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (6)(b).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(iii)~~ for all drivers:

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

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

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

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

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

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

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

~~(4) A person whose commercial driver's license is suspended under this section:~~

~~(a) is not eligible for a restricted probationary driver's license; and~~

~~(b) may not operate a commercial motor vehicle until the suspension is lifted and the person's commercial driver's license is restored."~~

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

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

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

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

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

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

(b) reckless driving;

(c) improper or erratic traffic lane changes;

(d) following too closely;

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

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

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

(h) operating a commercial motor vehicle ~~when the minimum testing standards for the class of vehicle operated or the type of cargo carried have not been satisfied by the individual~~ without the proper class of

commercial driver's license or endorsements, or both, for the specific vehicle type or types being operated or for the passengers or type or types of cargo being transported."

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

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

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

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

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

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

(2) A peace officer who determines that a commercial motor vehicle operator has a measured amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle shall place

the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that a person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against a charge of violating the provisions of subsection (1).

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

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

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

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

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

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

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

(5) Upon receipt of the officer's certified report, the department shall suspend the person's commercial

driver's license, with no provision for a restricted probationary commercial driver's license, for:

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

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

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

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

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

(b) all applications granted; and

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

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

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

(3) The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward a certified copy of ~~such~~ the record to the motor vehicle administrator in the state ~~wherein~~ in which the person ~~so convicted~~ is a resident.

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

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

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

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

Signed:

(Print Full Name)"

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

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

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

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

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

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

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

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

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