

HOUSE BILL NO. 192
INTRODUCED BY WAITSCHIES
BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "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 AND DISQUALIFICATIONS; 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; ~~INCREASING THE FEES FOR COMMERCIAL DRIVER'S LICENSES; REQUIRING PAYMENT OF FEES FOR APPLICATION FOR HAZARDOUS MATERIALS AND OTHER ENDORSEMENTS;~~ 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:

NEW SECTION. Section 1. Limitations on issuance of hazardous materials endorsement to commercial driver's license -- security threat assessment. (1) The department may not issue, transfer, or renew a hazardous materials endorsement for a person who holds a commercial driver's license unless it receives notice from the transportation security administration of the department of homeland security that:

(a) the person does not pose a security threat warranting denial of a hazardous materials endorsement;

(b) the person has been granted a waiver from the transportation security administration; or

(c) less than 4 years have elapsed since a favorable security threat assessment was performed in a former licensing jurisdiction.

(2) In addition to any requirements under this chapter and in accordance with the security threat assessment standards provided in 49 CFR, part 1572, an applicant who is seeking a hazardous materials endorsement shall:

(a) complete a separate application as prescribed by the transportation security administration;

(b) submit, as directed by the department, to a fingerprint-based background check by the transportation security administration; and

(c) pay to the agent of the transportation security administration the fees imposed under 49 CFR, part 1572, for collection and transmission of fingerprints and applicant information, processing of fingerprint identification records, and the security threat assessment and adjudication.

NEW SECTION. Section 2. Authority to revoke or remove hazardous materials endorsement. (1) If the transportation security administration of the department of homeland security informs the department that a person does not meet the standards for the security threat assessment provided in 49 CFR, part 1572, the department shall revoke the person's hazardous materials endorsement to a commercial driver's license. Revocation of the hazardous materials endorsement results in immediate withdrawal of the person's authority to transport hazardous materials in commerce, but does not otherwise affect the person's commercial driver's

license or any unrelated endorsements.

(2) A person whose hazardous materials endorsement has been revoked or removed under this section shall surrender the person's commercial driver's license to the department and apply for a replacement license, as provided in 61-5-114, that does not include the hazardous materials endorsement.

(3) Upon surrender of a hazardous materials endorsement by a person who is disqualified from holding a hazardous materials endorsement under 49 CFR, part 1572, the department shall note the removal of the hazardous materials endorsement on its records and on the commercial driver's license information system.

NEW SECTION. Section 3. Employer not to permit operation of commercial motor vehicle in violation of state law or federal regulation -- criminal and civil penalties. (1) An employer may not knowingly allow, require, permit, or authorize a person to operate a commercial motor vehicle in the United States:

(a) during any period in which the person's commercial driver's license has been suspended, revoked, or canceled by a state, the person has lost the privilege to operate a commercial motor vehicle in a state, or the person has been disqualified from operating a commercial motor vehicle;

(b) during any period in which the person has more than one commercial driver's license;

(c) during any period in which the person, the commercial motor vehicle the person is operating, or the motor carrier operation is subject to an out-of-service order; or

(d) in violation of a federal, state, or local law or regulation pertaining to railroad crossings.

(2) A violation of this section is a misdemeanor and a person convicted of a violation of this section shall be fined not less than \$25 or more than \$500 for the first offense and not less than \$25 or more than \$1,000 for each subsequent offense.

(3) (a) Except as provided in subsection (3)(b), an employer who violates this section is subject to a civil penalty of not less than \$2,750 or more than \$11,000.

(b) An employer who violates subsection (1)(d) is subject to a civil penalty of not more than \$10,000.

(c) The department or the county attorney of the county in which the violation occurred may petition the district court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section is in the county in which the violation occurred or in the first judicial district.

(d) A civil penalty collected under this section must be deposited in the state general fund.

NEW SECTION. Section 4. Commencement of commercial driver's license suspension or disqualification. A suspension or disqualification under this part commences either from the date of receipt by

the department of a report of conviction from a court or another licensing jurisdiction or the day following the completion of a previously imposed period of suspension or disqualification, whichever occurs later.

NEW SECTION. Section 5. Notification to other states of traffic violations. The department, upon receipt of a report of a conviction or a violation of any state or local law relating to motor vehicle traffic control, other than a parking violation, by a person who holds a commercial driver's license from another state or who is licensed in another state, shall report the conviction to the licensing entity in the state where the driver is licensed as follows:

- (1) beginning September 30, 2005, within 30 days of conviction; and
- (2) beginning September 30, 2008, within 10 days of conviction.

Section 6. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of money from certain designated license and other taxes. (1) Except as provided in subsection (5), the state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

- (a) income taxes, interest, and penalties collected under chapter 30;
- (b) except as provided in 15-31-121, all taxes, interest, and penalties collected under chapter 31;
- (c) oil and natural gas production taxes distributed to the general fund under 15-36-331;
- (d) electrical energy producer's license taxes under chapter 51;
- (e) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;
- (f) liquor license taxes under Title 16;
- (g) fees from driver's licenses, motorcycle endorsements, and ~~duplicate~~ replacement driver's licenses as provided in 61-5-121;
- (h) estate taxes under Title 72, chapter 16; and
- (i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under Title 16, chapters 1 through 4 and 6.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax

revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded.

(5) The administrative assessment provided for in 15-1-141 must be deposited in an account in the state special revenue fund to the credit of the department."

Section 7. Section 19-6-401, MCA, is amended to read:

"19-6-401. Payments into pension trust fund. All appropriations made by the state, all contributions by members, in the amount specified, all interest on and increase of the investments and money under this pension trust fund, all fees or portions of fees that are required by law to be paid to the retirement system or trust fund, and a portion of the fees from driver's licenses and ~~duplicate~~ replacement driver's licenses as provided in 61-5-121 must be deposited in the pension trust fund."

Section 8. Section 19-6-404, MCA, is amended to read:

"19-6-404. State's contribution. The state of Montana shall annually contribute to the pension trust fund an amount equal to 36.33% of the total compensation paid to the members from the following sources:

(1) an amount equal to 26.15% of the total compensation of the members is payable from the same source that is used to pay compensation to the members; and

(2) an amount equal to 10.18% of the total compensation of the members is payable from a portion of the fees from driver's licenses and ~~duplicate~~ replacement driver's licenses as provided in 61-5-121."

Section 9. Section 44-1-1005, MCA, is amended to read:

"44-1-1005. Motor carriers safety -- enforcement -- violations. (1) The department of justice shall adopt, by rule, standards for safety of operations of:

(a) any for-hire motor carrier or any private motor carrier;

(b) any motor vehicle or vehicle combination used in interstate commerce that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight, whichever is greater, of 10,001 pounds or more;

(c) any motor vehicle or vehicle combination used in intrastate commerce that has a gross vehicle weight

rating, gross combination weight rating, gross vehicle weight, or gross combination weight, whichever is greater, of 26,001 pounds or more and that is not a farm vehicle operating solely in Montana;

(d) any motor vehicle that is designed or used to transport at least 16 passengers, including the driver, and is not used to transport passengers for compensation;

(e) any motor vehicle that is designed or used to transport at least nine passengers, including the driver, for compensation; or

(f) any motor vehicle that is used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with federal hazardous materials regulations in 49 CFR, part 172.

(2) Standards of safety adopted under this section must substantially comply, within allowed tolerance guidelines, to the federal motor carrier safety regulations and the federal hazardous material regulations as applied to motor carriers and vehicles transporting passengers or property in commerce.

(3) The highway patrol has responsibility for enforcement of standards adopted pursuant to this section. Inspection of a vehicle based in Montana may, at the request of the carrier, be made at the place of business or domicile of the vehicle owner or, if that is not a practicable inspection site, at a designated location and at a mutually agreeable time. After inspection, a vehicle found to conform to the standards adopted pursuant to this section is entitled to certification and identification to exempt it from further safety inspection until the next required periodic inspection or until a nonconformity with standards is apparent. This section does not prohibit the inspection of a motor vehicle, as provided for by this section, at a safe location on a public road.

(4) The department shall cooperate with the department of transportation to ensure minimum duplication and maximum coordination of enforcement effort.

(5) The department may designate and train civilian employees as inspectors within the motor carrier safety assistance program. Each civilian inspector is a peace officer whose jurisdiction is limited to enforcement of violations of Title 61, chapters 5 and 9, and any standards adopted pursuant to this section. Each employee designated as a peace officer may:

- (a) issue citations and make arrests;
- (b) issue summonses;
- (c) accept bail;
- (d) serve warrants of arrest;
- (e) make reasonable inspections of cargo carried by commercial motor vehicles;
- (f) make reasonable safety inspections of commercial motor vehicles; and

(g) require production of documents relating to the cargo, driver, routing, maintenance, or ownership of commercial motor vehicles.

(6) Violations of the standards adopted pursuant to this section are punishable as provided in 61-9-512, and the court, upon conviction, ~~or forfeiture of bail that is not vacated~~ as defined in 61-5-213, shall forward a record of conviction ~~or forfeiture~~ to the department within 5 days in accordance with 61-11-101.

(7) As used in this section, the terms "for-hire motor carrier", "private motor carrier", "gross vehicle weight rating", and "gross combination weight rating" have the same meaning as provided in 49 CFR 390.5."

Section 10. 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 in the transportation of hazardous materials as defined in 61-1-137.~~

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

- (a) an authorized emergency service vehicle:
 - (i) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and
 - (ii) entitled to the exemptions granted under 61-8-107; ~~or~~
- (b) a vehicle:
 - (i) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;
 - (ii) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm 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; or

(c) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United States coast guard personnel.

(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; and

(d) "school bus" has the meaning provided in 49 CFR 383.5."

Section 11. Section 61-1-137, MCA, is amended to read:

"61-1-137. Hazardous ~~material~~ materials. "Hazardous ~~material~~ materials" means: ~~a substance or material, defined or listed as a hazardous material in Title 49, Code of Federal Regulations, in a quantity and form that may pose an unreasonable risk to health and safety or property when transported~~

(1) any materials that have been designated as hazardous under 49 U.S.C. 5103 and are required to be placarded under 49 CFR, part 172, subpart F; or

(2) any quantity of materials listed as select agents or toxins in 42 CFR, part 73."

Section 12. Section 61-1-505, MCA, is amended to read:

"61-1-505. Cancellation. "Cancellation" means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to ~~such the~~ the license; ~~but~~ Except as provided in 61-5-201(3), the cancellation of a license is without prejudice and application for a new license may be made at any time after ~~such the~~ the cancellation."

Section 13. Section 61-5-103, MCA, is amended to read:

"61-5-103. Residency requirement. (1) A person who has resided in Montana for more than 120 consecutive days is considered to be a resident for the purpose of being licensed to operate a motor vehicle and must be licensed under the laws of Montana before operating a motor vehicle.

(2) A person who ~~operates a commercial motor vehicle in Montana is considered to be a resident of Montana for the purpose of being licensed to operate a commercial motor vehicle if the person~~ has resided in Montana for more than 30 consecutive days:

(a) is considered to be a resident for the purpose of being licensed to operate a commercial motor vehicle; and

(b) must be licensed under the laws of Montana before operating any commercial motor vehicle.

(3) The department may issue a commercial driver's license to a person who is not a resident of Montana or domiciled in Montana only if:

(a) the person is domiciled in a foreign country with commercial driver license standards, as determined by the federal motor carrier safety administration of the department of transportation, that are not similar to the testing and licensing standards provided in 49 CFR, part 383, subparts F, G, and H; or

(b) the person is domiciled in a state that is prohibited by the federal motor carrier safety administration from issuing commercial driver's licenses under 49 CFR 384.405."

Section 14. Section 61-5-104, MCA, is amended to read:

"61-5-104. Exemptions. (1) The following persons are exempt from licensure under this chapter:

(a) a person who is a member of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated on official business;

(b) a person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and the spouse of the person who holds a valid license issued by another state and who is not employed in Montana, except as a member of the armed forces. If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be licensed, as required by 61-5-102, within 90 days of becoming employed.

(c) a person on active duty in the armed forces of the United States and in immediate possession of a valid license issued to that person in a foreign country by the armed forces of the United States, for a period of 45 days from the date of the person's return to the United States;

(d) a person who temporarily drives, operates, or moves a road machine, farm tractor, or implement of husbandry for use in intrastate commerce on a highway;

(e) a person who is a locomotive engineer, assistant engineer, conductor, brake tender, railroad utility person, or other member of the crew of a railroad locomotive or train being operated upon rails, including operation on a railroad crossing a public street, road, or highway. A person employed as described in this

subsection is not required to display a driver's license to a law enforcement officer in connection with the operation of a railroad locomotive or train within Montana.

(f) a person who temporarily drives, operates, or moves an off-highway vehicle, as defined in 23-2-801, on a forest development road in this state, as defined in 61-8-110, that has been designated and approved for off-highway vehicle use by the United States forest service if the person:

(i) is under 16 years of age but at least 12 years of age; and

(ii) at the time of driving, operating, or moving the off-highway vehicle, has in the person's possession a certificate showing the successful completion of an off-highway vehicle safety education course approved by the department of fish, wildlife, and parks and is in the physical presence of a person who possesses a license issued under this chapter.

(2) A nonresident who is at least 15 years of age and who is in immediate possession of a valid operator's license issued to the nonresident by the nonresident's home state or country may operate a motor vehicle, except a commercial motor vehicle, in this state.

(3) (a) A nonresident who is in immediate possession of a valid commercial driver's license issued to the nonresident by the nonresident's home jurisdiction, in accordance with the licensing and testing standards of 49 CFR, part 383, may operate a commercial motor vehicle in this state.

(b) For the purpose of this chapter, "jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, a province or territory of Canada, or the federal district of Mexico.

(4) A nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than 90 days in any calendar year, if the motor vehicle is registered in the home state or country of the nonresident.

(5) A driver's license issued under this chapter to a person who enters the United States armed forces, if valid and in effect at the time that the person enters the service, continues in effect so long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided by law, and for up to 30 days following the date on which the licensee is honorably separated from the service. During the 30-day period, the license is valid only when the license and the licensee's discharge, separation, leave, or furlough papers are in the licensee's immediate possession."

Section 15. Section 61-5-105, MCA, is amended to read:

"61-5-105. Who may not be licensed. The department may not issue a license under this chapter to a person:

- (1) who is under 16 years of age unless:
 - (a) the person is at least 15 years of age and has passed a driver's education course approved by the department and the superintendent of public instruction; or
 - (b) the person is at least 13 years of age and, because of individual hardship, to be determined by the department, needs a restricted license;
- (2) whose license or driving privilege is currently suspended, or revoked, or canceled or who is disqualified from operating a commercial motor vehicle in this or any state, as evidenced by an ineligible status report from the national driver register, established under 49 U.S.C. 30302, or from the commercial driver's license information system, established under 49 U.S.C. 31309;
- (3) who is addicted to the use of alcohol or narcotic drugs;
- (4) who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who, at the time of application, has not been restored to competency by the methods provided by law;
- (5) who is required by this chapter to take an examination;
- (6) who has not deposited proof of financial responsibility when required under the provisions of chapter 6 of this title;
- (7) who has any condition characterized by lapse of consciousness or control, either temporary or prolonged, that is or may become chronic. However, the department may in its discretion issue a license to an otherwise qualified person suffering from a condition if the afflicted person's attending physician attests in writing that the person's condition has stabilized and would not be likely to interfere with that person's ability to operate a motor vehicle safely and, if a commercial driver's license is involved, the person is physically qualified to operate a commercial motor vehicle under applicable state or federal regulations; ~~or~~
- (8) who lacks the functional ability, due to a physical or mental disability or limitation, to safely operate a motor vehicle on the highway; or
- (9) who is not a resident of or domiciled in Montana except as provided in 61-5-103(3)."

Section 16. 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 provide the following additional information:

(a) the name of each jurisdiction in which the applicant has previously been licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the application;

(b) a certification from the applicant that the applicant is not currently subject to a suspension, revocation, cancellation, 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) 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

(d) 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) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from 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.

(b) When received, the driving records must be appended to the driver's record created and maintained in this state. The department may rely on information contained in driving records received under this section to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a conviction or other conduct requiring suspension or revocation of a driver's license under state law. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 17. 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, and the commercial driver's license information system, established under 49 U.S.C. 31309.

(2) (a) 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 road test or skills test must be performed by the applicant in a motor vehicle that the applicant certifies is representative of the class and type of motor vehicle for which the applicant is seeking a license or endorsement.

(b) The knowledge test, ~~or road test, or both,~~ skills test 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) or by a certified third-party commercial driver testing program as provided in 61-5-118.

(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 or skills test 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 road or 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 18. 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~~ license receipts. The department shall adopt 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 appoint an agent to sell receipts.

(2) (a) 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:

(i) a full-face photograph of the licensee in the size and form prescribed by the department;

(ii) a distinguishing number issued to the licensee;

(iii) the full legal name, date of birth, Montana mailing address, and a brief description of the licensee;

and

(iv) either the licensee's customary signature or a digital reproduction of the licensee's customary signature.

(b) 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 road or 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 Except as provided in subsection (3)(d)(v), 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:

(A) the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant; or

(B) the applicant holds a commercial driver's license with a hazardous materials endorsement, the retention of which requires additional testing and a security threat assessment under 49 CFR, part 1572.

(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 driver's license. The department shall mail the notice to the Montana mailing address shown on the driver's license unless the licensee has submitted a change of address as required by 61-5-115.

(4) (a) Except as provided in subsections (4)(b), ~~and (4)(c), and (4)(d)~~, 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.

(d) (i) Except as provided in subsection (4)(d)(ii), a commercial driver's license expires on the anniversary of the licensee's birthday 5 years or less after the date of issue.

(ii) When a person obtains a Montana commercial driver's license with a hazardous materials endorsement after surrendering a comparable commercial driver's license with a hazardous materials endorsement from another licensing jurisdiction, the license expires on the anniversary of the licensee's birthday 5 years or less after the date of the issue of the surrendered license if, as reported in the commercial driver's license information system, a security threat assessment was performed on the person as a condition of issuance of the surrendered license.

(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) Upon application for a driver's license or commercial driver's license and any combination of the specified endorsements, the following fees must be paid:

~~(a)~~(i) driver's license, except a commercial driver's license -- \$5 a year or fraction of a year;

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

~~(e)(iii)~~ commercial driver's license:

~~(i)(A)~~ interstate -- ~~\$5~~ \$10 a year or fraction of a year; or

~~(ii)(B)~~ intrastate -- ~~\$3.50~~ \$8.50 a year or fraction of a year.;

~~(b) In addition to the fees imposed for a commercial driver's license under subsection (6)(a)(iii), the following fees must be paid:~~

~~—— (i) \$10 per endorsement for a combination vehicle endorsement, a tanker endorsement, or an operation with air brakes notation; and~~

~~—— (ii) \$25 per endorsement for a passenger or hazardous materials endorsement.~~

~~(d) renewal notice--~~

~~(e)(B) A renewal notice for either a driver's license or a commercial driver's license is 50 cents.~~

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

"61-5-112. Types and classes of commercial driver's licenses -- classification -- rulemaking -- reciprocity agreements. (1) 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:

(a) subject to the exceptions provided in this section, comport with the licensing standards and requirements of 49 CFR, part 383, and the medical qualifications of 49 CFR, part 391, and the security threat assessment provisions of 49 CFR, part 1572;

(b) 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;

(c) 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;~~

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

- (e) prescribe the operational and seasonal restrictions for a seasonal commercial driver's license;
 - (f) 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; and
 - (g) prescribe the minimum standards for certification of a third-party commercial driver testing program and any test waiver under 61-5-118.
- (2) The department is authorized to enter into reciprocal agreements with adjacent states that would allow certain drivers of vehicles transporting farm products, farm machinery, or farm supplies within 150 miles of a farm to operate without a commercial driver's license as provided in 61-1-134(2)."

Section 20. Section 61-5-114, MCA, is amended to read:

"61-5-114. Duplicate Replacement licenses. (1) If an instruction permit or driver's license issued under the provisions of this chapter is lost or destroyed, the person to whom it was issued may, upon the payment of a fee of \$10, obtain a ~~duplicate or substitute~~ replacement permit or license, upon furnishing proof satisfactory to the department that the permit or license has been lost or destroyed.

(2) If the hazardous materials endorsement on a commercial driver's license issued under the provisions of this chapter is revoked or removed pursuant to the authority provided in [section 2], the person to whom the license was issued shall surrender to the department the person's commercial driver's license with the hazardous materials endorsement and may obtain, upon making application and paying a \$10 fee, a replacement license that does not include a hazardous materials endorsement."

Section 21. Section 61-5-119, MCA, is amended to read:

"61-5-119. Definitions Driver rehabilitation specialist -- definition. (4) For the purposes of 61-5-120, "driver rehabilitation specialist" means a person who:

- (~~a~~)(1) possesses current certification from the association of driver educators for the disabled as a driver rehabilitation specialist; or
- (~~b~~)(~~i~~)(2) (a) provides comprehensive services in the clinical evaluation of the abilities of a person with a disability to safely operate a motor vehicle, utilizing, among other things, wheelchair and seating assessment, vehicle modification prescription, and driver education;
- (~~ii~~)(~~A~~)(b) (i) possesses a bachelor's degree in rehabilitation, education, or health and safety; in physical, occupational, or recreational therapy; or in a related profession; or
- (~~B~~)(ii) has an equivalent of 8 years of experience in driver rehabilitation and education; and

(iii)(c) has at least 1 year of experience in the area of driver evaluation and training for individuals with disabilities.

(2) ~~For the purposes of this chapter, "jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or a province or territory of Canada."~~

Section 22. Section 61-5-121, MCA, is amended to read:

"61-5-121. Disposition of fees. (1) ~~The~~ Except as provided in subsection (3), the disposition of the fees from driver's licenses, motorcycle endorsements, commercial driver's licenses, and ~~duplicate replacement~~ driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 22.3% of each driver's license fee, ~~41.41%~~ 18.25% OF EACH COMMERCIAL DRIVER'S LICENSE FEE, and 25% of each ~~duplicate replacement~~ driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. The department shall report the amount deposited and transferred under this subsection (1)(a) to the legislative finance committee by October 31 of the year preceding each regular session of the legislature.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee, 2.5% OF EACH COMMERCIAL DRIVER'S LICENSE FEE, and 3.75% of each ~~duplicate replacement~~ driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state general fund.

(d) The amount of 20.7% of each driver's license fee, ~~40.59%~~ 16.94% OF EACH COMMERCIAL DRIVER'S LICENSE FEE, and 8.75% of each ~~duplicate replacement~~ driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount of 54.5% of each driver's license fee, ~~78%~~ 62.31% OF EACH COMMERCIAL DRIVER'S LICENSE FEE, and 62.5% of each ~~duplicate replacement~~ driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 2.5%

of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited into the state general fund.

(g) The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and ~~duplicate replacement~~ driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit to the department of revenue all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund, as provided in subsection (1)(a), and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and ~~duplicate replacement~~ driver's licenses are collected by the department, it shall remit all fees to the department of revenue, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g).

~~(3) Any fee collected upon application for an endorsement or restriction on a commercial driver's license and the THE fee for a renewal notice, whether collected by a county treasurer, an authorized agent, or the department, must be remitted to the department of revenue for deposit in the state general fund."~~

Section 23. Section 61-5-125, MCA, is amended to read:

"61-5-125. Authority of department -- rulemaking authority. (1) The department shall administer and enforce the provisions of this chapter.

(2) The department shall adopt rules setting standards to govern driver's license examinations and reexaminations. The rules:

(a) must specifically address the functional abilities and skills required for a person to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway;

(b) must include minimum uncorrected or corrected visual acuity requirements for both unrestricted and

restricted licensure and may include minimum field of vision and depth perception requirements and hearing requirements for unrestricted and restricted licensure;

(c) may direct the design of one or more types of skills tests to assess an applicant's or licensee's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway. A skills test may consist of:

(i) a comprehensive assessment of a person's functional abilities by means of an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle; or

(ii) a more limited assessment of a person's functional abilities, conducted at the discretion of the department, as related to a specific physical or mental condition or conditions or a request for reexamination;

(d) must include operational restrictions based upon the visual acuity of an applicant or licensee;

(e) may take into consideration any nationally recognized standards or recommended practices for assessment of a person's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway;

(f) must include appropriate licensing criteria relating to the use of adaptive equipment or operational limits that can be readily discerned by law enforcement or a licensing agency in another jurisdiction;

(g) may be derived from medical guidelines and information compiled by driver licensing medical advisory or review boards from other jurisdictions, as well as information received from advocacy groups for persons with disabilities and senior citizens; and

(h) except as provided in 61-5-105, may not use a person's age or physical or mental disability, limitation, or condition as a justification for denial of a license.

(3) The department may adopt additional rules governing:

(a) acceptable methods of proof of identification that must be supplied by a person upon application for or renewal of a driver's license;

(b) issuance of a hardship license to an underage applicant;

(c) the cancellation of a driver's license upon receipt of an insufficient funds check in payment of license fees;

(d) circumstances under which the department may issue a probationary license to a person whose license has been suspended or revoked or a person whose license is subject to a discretionary suspension or revocation;

(e) restrictions to be imposed upon a probationary license;

(f) renewal of a driver's license by a person in the military assigned to active duty who had a valid

Montana driver's license at the time of entering active duty; and

(g) issuance of a ~~duplicate~~ replacement driver's license."

Section 24. Section 61-5-201, MCA, is amended to read:

"61-5-201. Authority of department to cancel license. (1) The department may cancel a driver's license ~~upon determining if it has reasonable grounds to believe that:~~

~~(a) the licensee was not entitled to the issuance; or that~~

~~(b) since the issuance, the licensee has become ineligible as determined pursuant to the provisions of 61-5-105; or that~~

~~(c) the licensee failed to give the required or correct information in the licensee's application or committed any fraud in making the application.~~

(2) Upon cancellation, the licensee shall surrender the canceled license to the department.

(3) A person whose driver's license is canceled because the person failed to give the required or correct information on the application or committed any fraud in making the application is disqualified from operating a commercial motor vehicle for a period of 60 days from the date of the cancellation."

Section 25. Section 61-5-213, MCA, is amended to read:

"61-5-213. Conviction defined. For the purposes of parts 1 through 3 of this chapter, part 8 of chapter 8, and 61-11-101 and 61-11-102 chapter 11, and as it relates to any state or local law regulating the operation of a motor vehicle on highways or mandating the revocation or suspension of a driver's license or driving privilege, the term "conviction" ~~shall mean a final conviction, except that the department shall record a deferred imposition of sentence as a conviction if the underlying offense is a felony. Also, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction~~ means:

(1) a plea of guilty or nolo contendere accepted by the court;

(2) an adjudication of guilt that has not been vacated by the appropriate court;

(3) a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal;

(4) a forfeiture of bail or collateral deposited to secure the person's appearance in court that has not been vacated;

(5) the payment of a fine or court cost, regardless of whether it is suspended or rebated; or

(6) the violation of a condition of release without bail, regardless of whether the condition is imposed as part of probation."

Section 26. Section 61-8-725, MCA, is amended to read:

"61-8-725. Penalty for violation of speed limits -- no record for certain violations. (1) A person violating the speed limit imposed pursuant to 61-8-303 shall be fined in accordance with the following schedule:

Amount of Fine	MPH in Excess of Speed Limit
\$ 20	1 - 10 (daytime)
20	1 - 10 (nighttime)
40	11 - 20
70	21 - 30
100	31+

(2) A violation of a speed limit imposed pursuant to 61-8-303 is not a criminal offense within the meaning of 3-1-317, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and, except as provided in subsection (4), may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of a speed limit against the insured or increase premiums because of the violation if the speed limit is exceeded by no more than:

- (a) 10 miles an hour during the daytime; or
 - (b) 5 miles an hour during the nighttime.
- (3) The surcharge provided for in 3-1-317 may not be imposed for a violation of 61-8-303.

(4) The recordkeeping restrictions provided in subsection (2) with respect to a person's driving record do not apply to a speed limit violation or conviction that was committed by:

(a) a Montana resident in another state whose violation or conviction was reported to the department by a court or the licensing authority in the state in which the violation occurred; or

(b) a person who holds a commercial driver's license regardless of whether or not the violation occurred while the person was operating a commercial motor vehicle."

Section 27. Section 61-8-802, MCA, is amended to read:

"61-8-802. Suspension of commercial driver's license -- disqualification -- major offenses. (1) 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 and disqualify the person from operating a commercial motor vehicle:

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

(b) upon receipt of a report of a second 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) For purposes of this section, the term "major offense" refers to a refusal to take a test under an implied consent law in this or any other jurisdiction, a test result under an implied consent law in any other jurisdiction that shows an alcohol concentration of .08 or more while operating a noncommercial motor vehicle or an alcohol concentration of .04 or more while operating a commercial motor vehicle, or a conviction ~~of or~~ forfeiture of bail not vacated for in this or any other jurisdiction of any of the following offenses:

(a) driving or being in actual physical control of a motor vehicle while under the influence of alcohol, 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 0.08 or more; or

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

(c) leaving the scene of an accident involving death or personal injury or failing to give information and render aid;

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

(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

(f) causing a fatality through negligent or criminal operation of a commercial motor vehicle."

Section 28. 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, 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 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.

(3) A person is considered to have committed a second or subsequent serious traffic violation if less than 3 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

Section 29. Section 61-8-807, MCA, is amended to read:

"61-8-807. Administration of tests. (1) Tests required under this part must be administered as provided in 61-8-405.

~~(2) The department may authorize a private individual, institution, or corporation to administer required driving examinations that would otherwise be administered by the department if they have been officially trained and certified to conduct them by the department and the third party has entered into an agreement with the department that complies with the requirements of 49 CFR part 383.75."~~

Section 30. Section 61-8-812, MCA, is amended to read:

"61-8-812. ~~Suspension of commercial driver's license -- operation~~ Operation of out-of-service vehicle -- criminal and civil penalties -- suspension of commercial driver's license. (1) A person may not operate a commercial motor vehicle during any period in which the person, the commercial motor vehicle the

person is operating, or the motor carrier operation is subject to an out-of-service order issued under state or federal authority.

(2) A violation of this section is a misdemeanor and a person convicted of a violation of this section shall be fined not less than \$25 or more than \$500 for the first offense and not less than \$25 or more than \$1,000 for each subsequent offense.

(3) (a) In addition to the misdemeanor penalties provided in subsection (2) and suspension of the person's commercial driver's license as provided in subsection (4), a person who violates an out-of-service order issued under state or federal authority is subject to a civil penalty of not less than \$1,100 or more than \$2,750.

(b) The department or the county attorney of the county in which the violation occurred may petition the district court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section is the county in which the violation occurred or in the first judicial district.

(c) A civil penalty collected under this section must be deposited in the state general fund.

~~(4)~~(4) Upon receipt of notice from a court of competent jurisdiction or another licensing jurisdiction that a person holding a commercial driver's license has been convicted of violating an out-of-service order, the department shall suspend the person's commercial driver's license for:

(a) 6 months for a first conviction;

(b) 1 year for a second conviction if the vehicle being operated by the person at the time of the violation was not transporting placardable hazardous materials or was not designed or being used to transport more than 15 passengers, inclusive of the driver; and

(c) 3 years:

(i) for a second conviction if the vehicle:

(A) being operated at the time of the violation was transporting placardable hazardous materials; or

(B) was designed or being used to transport more than 15 passengers, inclusive of the driver; and

(ii) for a third or subsequent conviction.

~~(2)~~(5) For purposes of this section, an offender is considered to have been previously convicted if less than 10 years have elapsed between the commission of the present offense and a previous conviction.

~~(3)~~(6) A temporary or probationary commercial driver's license may not be issued while a commercial driver's license is suspended under subsection ~~(4)~~ (4)."

Section 31. Section 61-11-101, MCA, is amended to read:

"61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender

of licenses. (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days after the conviction becomes final, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or ordinances, shall forward a record of the conviction, as defined in 61-5-213, or forfeiture to the department within 5 days after a the conviction or a forfeiture of bail that is not vacated, except for a conviction or a forfeiture of bail for a standing or parking statute or ordinance becomes final. The court may recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete a chemical dependency education course, treatment, or both, as ordered by the court under 61-8-732.

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

(4) A conviction becomes final for the purposes of this part upon the later of:

(a) expiration of the time for appeal of the court's judgment or sentence to the next highest court;

(b) forfeiture of bail that is not vacated; or

(c) imposition of a fine or court cost as a condition of a deferred imposition of a sentence or a suspended execution of a sentence.

(5) A court may not take any action, including deferring imposition of judgment, on a conviction that would prevent a conviction for any violation of a state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record."

Section 32. 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 the reasons for denial;

(b) all applications granted; and

(c) the name of each licensee whose license has been suspended or revoked by the department and after each name the reasons for 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. The department shall maintain records in a manner that allows an individual record of each licensee, showing the convictions of the licensee and certain traffic accidents in which the licensee has been involved. 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. A record of involvement in a traffic accident may not be entered on a licensee's record unless 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.

(c) The department shall retain records created under this section for a period of time that meets or exceeds the standards established under 49 CFR, part 384.

(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 the record to the motor vehicle administrator in the state in which the person 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. 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 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 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)"

Section 33. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" ~~means a finding of guilt by duly constituted judicial authority, a plea of guilty or nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle that is prohibited by law, ordinance, or administrative order.~~ has the meaning provided in 61-5-213.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

- (a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;
- (b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;
- (c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;
- (d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, 10 points;
- (e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;
- (f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;
- (g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;
- (h) reckless driving, 5 points;
- (i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;
- (j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;
- (k) operating a motor vehicle without a license to do so, 2 points (this subsection (2)(k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(l) speeding, except as provided in 61-8-725(2), 3 points;

(m) all other moving violations, 2 points.

(3) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

(4) "License" means any type of license or permit to operate a motor vehicle.

(5) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway, as the term is defined in 61-1-201.

(6) A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking."

NEW SECTION. **Section 34. Repealer.** Sections 61-8-809, 61-8-810, and 61-8-811, MCA, are repealed.

NEW SECTION. **Section 35. Codification instruction.** (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 61, chapter 5, part 2, and the provisions of Title 61, chapter 5, part 2, apply to [sections 1 and 2].

(2) [Sections 3 through 5] are intended to be codified as an integral part of Title 61, chapter 8, part 8, and the provisions of Title 61, chapter 8, part 8, apply to [sections 3 through 5].

COORDINATION SECTION. SECTION 36. COORDINATION INSTRUCTION. IF SENATE BILL NO. 285 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN THE CODE COMMISSIONER SHALL INCLUDE THE REVISIONS TO THE DEFINITIONS OF "COMMERCIAL MOTOR VEHICLE" AND "CANCELLATION" IN [THIS ACT] IN THE DEFINITION OF THOSE TERMS IN SENATE BILL NO. 285, AND THE CODE COMMISSIONER SHALL CHANGE THE REFERENCE TO 61-1-137 IN THE DEFINITION OF "COMMERCIAL MOTOR VEHICLE" TO "61-8-801".

COORDINATION SECTION. SECTION 37. COORDINATION INSTRUCTION. IF SENATE BILL NO. 285 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN [SECTION 2(1)] OF HOUSE BILL NO. 192 MUST BE AMENDED AS FOLLOWS:

"(1) If the transportation security administration of the department of homeland security informs the

department that a person does not meet the standards for the security threat assessment provided in 49 CFR, part 1572, the department shall revoke the person's hazardous materials endorsement to a commercial driver's license. Revocation of the hazardous materials endorsement results in immediate withdrawal of the person's authority to transport hazardous materials, as defined in 61-8-801, in commerce, but does not otherwise affect the person's commercial driver's license or any unrelated endorsements."

COORDINATION SECTION. SECTION 38. COORDINATION INSTRUCTION. IF SENATE BILL NO. 459 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN [SECTION 8(7)] OF SENATE BILL NO. 459 MUST BE AMENDED AS FOLLOWS:

"(7) A violation of the standards adopted pursuant to this section is punishable as provided in 61-9-512, and the court, upon conviction, ~~or forfeiture of bail that is not vacated~~ as defined in 61-5-213, shall forward a record of conviction ~~or forfeiture~~ to the department within 5 days in accordance with 61-11-101."

NEW SECTION. SECTION 39. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. SECTION 40. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2005.

(2) (a) [Sections 1, 2, 10, 11, 18(1) through (5) and (7), 19, and 20 and this section] are effective on passage and approval.

(b) [Sections 18(6) and 22] are effective July 1, 2005.

NEW SECTION. SECTION 41. Retroactive applicability. [Sections 1, 2, 10, 11, 18(1) through (5) and (7), 19, and 20] apply retroactively, within the meaning of 1-2-109, to any new hazardous materials endorsement issued by the department of justice on or after January 31, 2005, and to any hazardous materials endorsement renewed or hazardous materials endorsement transfer authorized by the department on or after May 31, 2005.

- END -

