

SENATE BILL NO. 380
INTRODUCED BY V. COCCHIARELLA

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT FEDERALLY MANDATED DRUG AND ALCOHOL TESTS OF COMMERCIAL VEHICLE OPERATORS BE REPORTED TO THE DEPARTMENT OF JUSTICE IF THE TEST RESULTS ARE POSITIVE; REQUIRING THAT A REFUSAL TO SUBMIT TO DRUG OR ALCOHOL TESTING BE REPORTED AND TREATED AS A POSITIVE TEST RESULT; REQUIRING THE DEPARTMENT OF JUSTICE TO SUSPEND A COMMERCIAL DRIVER'S LICENSE UPON RECEIPT OF A REPORT OF A POSITIVE DRUG OR ALCOHOL TEST; PROVIDING FOR A HEARING UPON SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE; ALLOWING THE DEPARTMENT OF JUSTICE TO ADOPT RULES REGARDING THE HEARING AND SUSPENSION PROCESS; REQUIRING A LICENSE TO REMAIN IN EFFECT UNTIL A PERSON HAS UNDERGONE DRUG AND ALCOHOL ASSESSMENT AND TREATMENT; REQUIRING THAT A COMMERCIAL DRIVER'S LICENSE BE PERMANENTLY SUSPENDED UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTIONS 61-2-107, 61-5-218, AND 61-8-802, MCA."

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

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

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

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

(c) "Positive alcohol confirmation test" means an alcohol confirmation test that:

- (i) has been conducted by a breath alcohol technician under the provisions of 49 CFR, part 40; and
- (ii) indicates an alcohol concentration of 0.04 or more.

(d) "Qualified person" means a person acting under the supervision and direction of a physician or registered nurse.

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

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

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

(ii) has undergone review and final determination by a physician, registered nurse, or qualified person.

(2) A physician, registered nurse, qualified person, or breath alcohol technician hired by or under contract to a commercial motor vehicle operator employer shall report to the department a finding of a Montana-licensed commercial motor vehicle operator's verified positive drug test or positive alcohol confirmation test.

(3) A commercial motor vehicle operator employer shall report to the department a refusal by a commercial motor vehicle operator to take a drug or alcohol test, under circumstances that constitute a refusal to test under 49 CFR 40.191, if the refusal has not been reported by a physician, registered nurse, qualified person, or breath alcohol technician.

(4) A commercial motor vehicle operator employer shall make it a written condition of any contract entered into with a physician, registered nurse, qualified person, or breath alcohol technician, regardless of the state where the physician, registered nurse, or other qualified person, or breath alcohol technician is located, that the physician, registered nurse, qualified person, or breath alcohol technician is required to make reports to the department regarding Montana-licensed commercial motor vehicle operators to be used as provided in [section 2]. Failure to obtain the contractual condition or agreement is punishable by a fine of not more than \$100 for each violation.

NEW SECTION. Section 2. Suspension of commercial driver's license -- report of positive drug or alcohol test -- hearing -- rules -- duration of suspension. (1) (a) When the department receives a report from a physician, registered nurse, qualified person, breath alcohol technician, or commercial motor vehicle operator employer that a Montana-licensed commercial motor vehicle operator has had a verified positive drug test or a positive alcohol confirmation test or has refused to take a drug or alcohol test conducted under the procedures established in 49 CFR, part 40, the department shall suspend the operator's commercial driver's license, subject to a hearing as provided in this section.

(b) The department shall give written notice by mail of the suspension to the commercial motor vehicle operator.

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

(2) A person who has received a notice of suspension as provided in subsection (1) may request a

hearing to challenge the suspension within 20 days from the date that the notice is postmarked. If a request for a hearing is mailed to the department, it must be postmarked within 20 days after the department has given notice of the license suspension.

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

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

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

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

(c) whether the physician, registered nurse, qualified person, or breath alcohol technician making the report accurately followed the protocols for testing established to certify the results or, in the event of a report of a person refusing to take a drug or alcohol test, whether the circumstances constitute the refusal of a test under the provisions of 49 CFR 40.191; and

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

(5) For the purposes of a hearing as provided in this section, a copy of a positive test result with a declaration by the physician, registered nurse, qualified person, or breath alcohol technician stating the accuracy of the laboratory protocols that were followed to arrive at the test result is prima facie evidence:

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

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

(c) that the physician, registered nurse, qualified person, or breath alcohol technician making the report accurately followed the protocols for testing established to certify the results.

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

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

(8) A suspension of a commercial driver's license under this section is not in effect while a formal hearing

or subsequent appeal to the district court is pending if:

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

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

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

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

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

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

(iii) pays a reinstatement fee as required in 61-2-107 for reinstatement of the license.

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

(11) Upon receiving a report of a third verified positive drug test or positive alcohol confirmation test result on the same person within a 5-year period, the department shall suspend the person's commercial driver's license for life. The suspension is subject to rules adopted by the department pursuant to federal rules that allow for driver rehabilitation and license reinstatement, if the driver is otherwise eligible, after a minimum 10-year suspension period.

Section 3. Section 61-2-107, MCA, is amended to read:

"61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.

(1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205, ~~or 61-8-402,~~ or [section 2] must remain suspended or revoked until the driver has paid to the department a fee of \$200 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) The department shall deposit one-half of the fees collected under subsection (1) in the general fund and the other half in an account in the state special revenue fund to be used for funding county drinking and

driving prevention programs as provided in 61-2-108."

Section 4. Section 61-5-218, MCA, is amended to read:

"61-5-218. License reinstatement fee following license suspension or revocation. (1) Except as provided in subsection (2), a person whose driver's license, other than a commercial driver's license, or driving privilege has been suspended or revoked shall pay a reinstatement fee of \$100 to the department to have the driver's license or driving privilege reinstated.

(2) A person whose driver's license or driving privilege was suspended or revoked under 61-5-205, ~~or 61-8-402,~~ or [section 2] shall pay a reinstatement fee as required by 61-2-107. A driver's license or driving privilege that was suspended or revoked under 61-5-207 must be reinstated without payment of a reinstatement fee.

(3) The department shall deposit the fees collected under subsection (1) in the general fund."

Section 5. Section 61-8-802, MCA, is amended to read:

"61-8-802. Suspension of commercial driver's license -- disqualification -- major offenses. (1) (a) 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)~~(i) 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 materials, the suspension must be for 3 years; or

~~(b)~~(ii) 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.

(b) Upon receipt of a report of a positive drug or alcohol test administered under [section 1] to 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 as provided in [section 2].

(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 0.08 or more while operating a noncommercial motor vehicle or an alcohol concentration of 0.04 or more while operating a commercial motor vehicle, or a conviction 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."

NEW SECTION. Section 6. Codification instruction. [Sections 1 and 2] 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 1 and 2].

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