

HOUSE BILL NO. 572

INTRODUCED BY J. RICE  
BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE HOUSE

FEBRUARY 2, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
  ON HIGHWAYS & TRANSPORTATION.

FEBRUARY 4, 1991                   FIRST READING.

FEBRUARY 21, 1991                  COMMITTEE RECOMMEND BILL  
  DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 22, 1991                  PRINTING REPORT.

FEBRUARY 23, 1991                  SECOND READING, DO PASS.

FEBRUARY 25, 1991                  ENGROSSING REPORT.

FEBRUARY 26, 1991                  THIRD READING, PASSED.  
  AYES, 82; NOES, 17.

  TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 27, 1991                  INTRODUCED AND REFERRED TO COMMITTEE  
  ON JUDICIARY.

  FIRST READING.

MARCH 25, 1991                    COMMITTEE RECOMMEND BILL BE  
  CONCURRED IN. REPORT ADOPTED.

MARCH 28, 1991                    SECOND READING, CONCURRED IN AS  
  AMENDED.

APRIL 1, 1991                    THIRD READING, CONCURRED IN.  
  AYES, 48; NOES, 1.

  RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 9, 1991                    RECEIVED FROM SENATE.

  SECOND READING, AMENDMENTS  
  CONCURRED IN.

APRIL 10, 1991

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. 572  
 2 INTRODUCED BY *J. Rice*  
 3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE COMMERCIAL  
 6 MOTOR VEHICLE OPERATOR LICENSING STATUTES TO COMPLY WITH  
 7 FEDERAL MANDATES; REMOVING THE AUTHORITY OF A PERSON WITH A  
 8 COMMERCIAL VEHICLE OPERATOR'S ENDORSEMENT TO HAUL HAZARDOUS  
 9 MATERIALS; RAISING FROM 10 YEARS TO LIFE THE MAXIMUM  
 10 ADMINISTRATIVE SUSPENSION FOR OPERATING A COMMERCIAL MOTOR  
 11 VEHICLE WITH A BLOOD ALCOHOL CONTENT OF OVER 0.04%; REDUCING  
 12 FROM 0.04% TO ANY MEASURABLE AMOUNT THE MINIMUM BLOOD  
 13 ALCOHOL CONTENT LEVEL FOR TESTING UNDER THE IMPLIED CONSENT  
 14 STATUTE AND FOR TEMPORARILY REMOVING A COMMERCIAL MOTOR  
 15 VEHICLE OPERATOR FROM SERVICE; PROVIDING THAT THE  
 16 SUSPENSIONS CALLED FOR IN THE COMMERCIAL OPERATOR STATUTES  
 17 FOR SECOND OR SUBSEQUENT OFFENSES BE IMPOSED FOR ANY  
 18 COMBINATION OF OFFENSES CALLING FOR SUSPENSION; PROVIDING  
 19 FOR SEPARATE OFFENSES OF DRIVING UNDER THE INFLUENCE,  
 20 OPERATING WITH A BLOOD ALCOHOL CONTENT OF 0.04% OR MORE,  
 21 LEAVING THE SCENE OF AN ACCIDENT WHILE OPERATING A  
 22 COMMERCIAL MOTOR VEHICLE, OR USING A COMMERCIAL MOTOR  
 23 VEHICLE IN THE COMMISSION OF A FELONY; AND AMENDING SECTIONS  
 24 61-1-135, 61-5-208, 61-8-805, AND 61-8-806, MCA."  
 25

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

2 **Section 1.** Section 61-1-135, MCA, is amended to read:  
 3 **"61-1-135. Commercial vehicle operator's endorsement.**  
 4 "Commercial vehicle operator's endorsement" means an  
 5 endorsement to a Montana driver's license that authorizes  
 6 the licensee to operate a class of commercial motor vehicle.  
 7 However, ~~if the applicant's vehicle does not otherwise~~  
 8 ~~require a commercial vehicle operator's endorsement, a~~  
 9 ~~hazardous material endorsement may be substituted for the~~  
 10 ~~commercial vehicle operator's endorsement."~~

11 **Section 2.** Section 61-5-208, MCA, is amended to read:  
 12 **"61-5-208. Period of suspension or revocation.** (1) The  
 13 department may not suspend or revoke a driver's license,  
 14 commercial vehicle operator's endorsement, or privilege to  
 15 drive a motor vehicle on the public highways for a period of  
 16 more than 1 year, except as otherwise permitted under  
 17 ~~subsection (2) of this section, 61-5-207, 61-5-212,~~  
 18 ~~61-6-123, 61-8-803 through 61-8-805, and 61-11-211~~ by law.

19 (2) A person whose license, commercial vehicle  
 20 operator's endorsement, or privilege to drive a motor  
 21 vehicle on the public highways has been suspended or revoked  
 22 is not entitled to have the license, endorsement, or  
 23 privilege renewed or restored unless the revocation was for  
 24 a cause which has been removed, except that after the  
 25 expiration of the period of the revocation or suspension,



1 the person may make application for a new license or  
 2 endorsement as provided by law but the department may not  
 3 issue a new license or endorsement unless and until it is  
 4 satisfied, after investigation of the driving ability of the  
 5 person and upon a showing by its records or other sufficient  
 6 evidence, that the person is eligible to be licensed to  
 7 drive in Montana. When any person is convicted or forfeits  
 8 bail or collateral not vacated for the offense of operating  
 9 or being in actual physical control of a motor vehicle while  
 10 under the influence of alcohol or any drug or a combination  
 11 thereof or for the offense of operation of a motor vehicle  
 12 by a person with alcohol concentration of 0.10 or more, the  
 13 department shall, upon receiving a report of conviction or  
 14 forfeiture of bail or collateral not vacated, suspend the  
 15 license, including any commercial vehicle operator's  
 16 endorsement, or driving privilege of the person for a period  
 17 of 6 months. Upon receiving a report of a conviction or  
 18 forfeiture of bail or collateral for a second, third, or  
 19 subsequent offense within 5 years of the first offense, the  
 20 department shall revoke the license, commercial vehicle  
 21 operator's endorsement, or driving privilege of the person  
 22 for a period of 1 year, except that if the 1-year period  
 23 passes and the person has not completed an alcohol  
 24 information course, treatment, or both, as ordered by the  
 25 sentencing court, the license revocation remains in effect

1 until the course, treatment, or both are completed.  
 2 (3) The period for all revocations made mandatory by  
 3 61-5-205 is 1 year except as provided in subsection (2).  
 4 (4) The period of revocation for any person convicted  
 5 of any offense which makes mandatory the revocation of the  
 6 driver's license commences from date of conviction or  
 7 forfeiture of bail.  
 8 (5) If a person is convicted of a violation of 61-8-401  
 9 or 61-8-406 while operating a commercial motor vehicle, the  
 10 department shall suspend the person's driver's license as  
 11 provided in subsection (2). In addition, the department  
 12 shall suspend the person's commercial vehicle operator's  
 13 endorsement in accordance with the provisions of this  
 14 section."  
 15 **Section 3.** Section 61-8-805, MCA, is amended to read:  
 16 "61-8-805. Suspension for operating a commercial  
 17 vehicle with a blood alcohol concentration of 0.04 or more  
 18 -- hearing. (1) A person whose blood alcohol concentration  
 19 is 0.04 or more while he drives or is in actual physical  
 20 control of a commercial motor vehicle is subject to the  
 21 suspension of his commercial vehicle operator's endorsement.  
 22 If the department receives a sworn report from a peace  
 23 officer that the person was operating a commercial motor  
 24 vehicle while his blood alcohol concentration was 0.04 or  
 25 more, the department shall suspend the driver's commercial

1 vehicle operator's endorsement:

2 (a) for 1 year, with no provision for a restricted  
3 probationary license or endorsement, upon receipt of the  
4 first report, except that if the offense occurred in a  
5 commercial motor vehicle transporting hazardous materials,  
6 the suspension must be for 3 years; and

7 (b) for ~~10--years~~ life, with no provision for a  
8 restricted probationary license or endorsement, upon receipt  
9 of a second or subsequent report at any time as determined  
10 from the records of the department, unless a restricted  
11 license or endorsement is allowed by federal rules governing  
12 commercial drivers.

13 (2) A peace officer who determines that a commercial  
14 motor vehicle ~~operator's blood-alcohol-concentration is 0.04~~  
15 ~~or--more~~ operator has any measured amount or detected  
16 presence of alcohol in his body shall place the commercial  
17 motor vehicle operator out of service as mandated by federal  
18 regulations for 24 hours.

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

23 (4) The department shall immediately notify in writing  
24 any person whose commercial vehicle operator's endorsement  
25 is suspended under this section. The person suspended has

1 the right to file a petition within 30 days after the notice  
2 is given for a hearing in the matter in the district court  
3 in the county in which the finding of blood alcohol  
4 concentration was made. The court has jurisdiction and  
5 shall set the matter for hearing upon 10 days' written  
6 notice to the county attorney of the county in which the  
7 appeal is filed. The county attorney shall represent the  
8 state. The court shall take testimony and examine the facts  
9 of the case, except that the issue is limited to whether the  
10 person was driving or had actual physical control of a  
11 commercial motor vehicle while his blood alcohol  
12 concentration was 0.04 or more. The court shall determine  
13 whether the petitioner is entitled to a commercial vehicle  
14 operator's endorsement or is subject to suspension as  
15 provided in this section. The provisions of 61-8-404 apply  
16 to any proceedings under this section."

17 **Section 4.** Section 61-8-806, MCA, is amended to read:

18 **"61-8-806. Chemical blood, breath, or urine tests of**  
19 **commercial vehicle operators -- procedure -- suspension.** (1)  
20 A person who operates a commercial motor vehicle upon the  
21 ways of this state open to the public is considered to have  
22 given consent, subject to the provisions of 61-8-401 and  
23 61-8-805, to a chemical test of his blood, breath, or urine  
24 for the purpose of determining the alcohol content of his  
25 blood if he is requested to submit to the test by a peace

1 officer having reasonable grounds to believe the person to  
 2 have been driving or in actual physical control of a  
 3 commercial motor vehicle upon the ways of this state open to  
 4 the public ~~while his blood-alcohol concentration was 0.04 or~~  
 5 ~~more~~ with any measured amount or detected presence of  
 6 alcohol in his body. The peace officer may designate a  
 7 blood, breath, or urine test to be administered.

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

11 (3) If a commercial motor vehicle operator who is a  
 12 resident of Montana refuses upon the request of a peace  
 13 officer to submit to a chemical test designated by the  
 14 officer as provided in subsection (1), the test may not be  
 15 given. On behalf of the department, the officer shall  
 16 immediately seize the person's driver's license showing the  
 17 commercial vehicle operator's endorsement and forward the  
 18 license to the department, along with a sworn report that he  
 19 had reasonable grounds to believe the person had been  
 20 driving or was in actual physical control of a commercial  
 21 motor vehicle upon ways of this state open to the public  
 22 while having ~~a blood-alcohol concentration of 0.04 or more~~  
 23 any measured amount or detected presence of alcohol in his  
 24 body and that the person had refused to submit to the test  
 25 upon the request of the officer. Upon receipt of the

1 report, the department shall suspend the license for a  
 2 period provided in subsection (5).

3 (4) Upon seizure of a resident's driver's license  
 4 showing a commercial vehicle operator's endorsement, the  
 5 peace officer shall issue, on behalf of the department, a  
 6 temporary driving permit without the commercial vehicle  
 7 operator's endorsement. The temporary driving permit is  
 8 valid for 72 hours after issuance.

9 (5) If a commercial motor vehicle operator refuses to  
 10 submit to a chemical test as provided in subsection (3), the  
 11 department shall suspend his commercial vehicle operator's  
 12 endorsement:

13 (a) upon first refusal, for 1 year, with no provision  
 14 for a restricted probationary license or endorsement, except  
 15 that if the offense occurred in a commercial motor vehicle  
 16 transporting hazardous materials, the suspension for a first  
 17 refusal must be for 3 years;

18 (b) upon a second or subsequent refusal at any time as  
 19 determined from the records of the department, for 10 years,  
 20 with no provision for a restricted probationary license or  
 21 endorsement unless allowed by federal rules governing  
 22 commercial drivers.

23 (6) A nonresident commercial motor vehicle operator who  
 24 refuses to submit to a chemical test as provided in  
 25 subsection (3) is subject to suspension by the department as

1 provided in subsection (5) and may receive a temporary  
2 driving permit as provided in subsection (4)."

3 NEW SECTION. Section 5. Leaving the scene of an  
4 accident involving commercial motor vehicle -- suspension.  
5 Upon receipt of information that a commercial motor vehicle  
6 operator has been convicted of an offense under 61-7-103,  
7 61-7-104, or 61-7-106 while operating a commercial motor  
8 vehicle, the department shall suspend the driver's  
9 commercial motor vehicle endorsement as provided in  
10 61-8-803.

11 NEW SECTION. Section 6. Suspension of commercial  
12 vehicle operator's endorsement -- felony involving a  
13 commercial motor vehicle. Upon receipt of information that a  
14 commercial motor vehicle operator has been convicted of  
15 using a commercial motor vehicle in the commission of a  
16 felony, the department shall suspend the driver's commercial  
17 vehicle operator's endorsement as provided in 61-8-804.

18 NEW SECTION. Section 7. Suspension of commercial  
19 vehicle operator's endorsement -- duration -- second or  
20 subsequent offense. The department shall suspend an  
21 operator's commercial vehicle operator's endorsement for  
22 life if the operator has been convicted of a second offense  
23 in a separate incident of any offense described in  
24 61-5-208(5) or 61-8-804 through 61-8-806.

25 NEW SECTION. Section 8. Codification instruction.

1 [Sections 5 through 7] are intended to be codified as an  
2 integral part of Title 61, chapter 8, part 8, and the  
3 provisions of Title 61, chapter 8, part 8, apply to  
4 [sections 5 through 7].

-End-

APPROVED BY COMMITTEE  
ON HIGHWAYS & TRANSPORTATION

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 11 VEHICLE WITH A BLOOD ALCOHOL CONTENT OF OVER 0.04%; REDUCING  
 12 FROM 0.04% TO ANY MEASURABLE AMOUNT THE MINIMUM BLOOD  
 13 ALCOHOL CONTENT LEVEL FOR TESTING UNDER THE IMPLIED CONSENT  
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 16 SUSPENSIONS CALLED FOR IN THE COMMERCIAL OPERATOR STATUTES  
 17 FOR SECOND OR SUBSEQUENT OFFENSES BE IMPOSED FOR ANY  
 18 COMBINATION OF OFFENSES CALLING FOR SUSPENSION; PROVIDING  
 19 FOR SEPARATE OFFENSES OF DRIVING UNDER THE INFLUENCE,  
 20 OPERATING WITH A BLOOD ALCOHOL CONTENT OF 0.04% OR MORE,  
 21 LEAVING THE SCENE OF AN ACCIDENT WHILE OPERATING A  
 22 COMMERCIAL MOTOR VEHICLE, OR USING A COMMERCIAL MOTOR  
 23 VEHICLE IN THE COMMISSION OF A FELONY; AND AMENDING SECTIONS  
 24 61-1-135, 61-5-208, 61-8-805, AND 61-8-806, MCA."  
 25

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 2 **Section 1.** Section 61-1-135, MCA, is amended to read:  
 3 **"61-1-135. Commercial vehicle operator's endorsement.**  
 4 "Commercial vehicle operator's endorsement" means an  
 5 endorsement to a Montana driver's license that authorizes  
 6 the licensee to operate a class of commercial motor vehicle.  
 7 However, ~~if the applicant's vehicle does not otherwise~~  
 8 ~~require a commercial vehicle operator's endorsement, a~~  
 9 ~~hazardous material endorsement may be substituted for the~~  
 10 ~~commercial vehicle operator's endorsement."~~  
 11 **Section 2.** Section 61-5-208, MCA, is amended to read:  
 12 **"61-5-208. Period of suspension or revocation.** (1) The  
 13 department may not suspend or revoke a driver's license,  
 14 commercial vehicle operator's endorsement, or privilege to  
 15 drive a motor vehicle on the public highways for a period of  
 16 more than 1 year, except as otherwise permitted under  
 17 ~~subsection (2) of this section, 61-5-207, 61-5-212,~~  
 18 ~~61-6-123, 61-8-803 through 61-8-805, and 61-11-211~~ by law.  
 19 (2) A person whose license, commercial vehicle  
 20 operator's endorsement, or privilege to drive a motor  
 21 vehicle on the public highways has been suspended or revoked  
 22 is not entitled to have the license, endorsement, or  
 23 privilege renewed or restored unless the revocation was for  
 24 a cause which has been removed, except that after the  
 25 expiration of the period of the revocation or suspension,





1 the person may make application for a new license or  
 2 endorsement as provided by law but the department may not  
 3 issue a new license or endorsement unless and until it is  
 4 satisfied, after investigation of the driving ability of the  
 5 person and upon a showing by its records or other sufficient  
 6 evidence, that the person is eligible to be licensed to  
 7 drive in Montana. When any person is convicted or forfeits  
 8 bail or collateral not vacated for the offense of operating  
 9 or being in actual physical control of a motor vehicle while  
 10 under the influence of alcohol or any drug or a combination  
 11 thereof or for the offense of operation of a motor vehicle  
 12 by a person with alcohol concentration of 0.10 or more, the  
 13 department shall, upon receiving a report of conviction or  
 14 forfeiture of bail or collateral not vacated, suspend the  
 15 license, including any commercial vehicle operator's  
 16 endorsement, or driving privilege of the person for a period  
 17 of 6 months. Upon receiving a report of a conviction or  
 18 forfeiture of bail or collateral for a second, third, or  
 19 subsequent offense within 5 years of the first offense, the  
 20 department shall revoke the license, commercial vehicle  
 21 operator's endorsement, or driving privilege of the person  
 22 for a period of 1 year, except that if the 1-year period  
 23 passes and the person has not completed an alcohol  
 24 information course, treatment, or both, as ordered by the  
 25 sentencing court, the license revocation remains in effect

1 until the course, treatment, or both are completed.

2 (3) The period for all revocations made mandatory by  
 3 61-5-205 is 1 year except as provided in subsection (2).

4 (4) The period of revocation for any person convicted  
 5 of any offense which makes mandatory the revocation of the  
 6 driver's license commences from date of conviction or  
 7 forfeiture of bail.

8 (5) If a person is convicted of a violation of 61-8-401  
 9 or 61-8-406 while operating a commercial motor vehicle, the  
 10 department shall suspend the person's driver's license as  
 11 provided in subsection (2). In addition, the department  
 12 shall suspend the person's commercial vehicle operator's  
 13 endorsement in accordance with the provisions of this  
 14 section TITLE."

15 **Section 3.** Section 61-8-805, MCA, is amended to read:

16 "61-8-805. Suspension for operating a commercial  
 17 vehicle with a blood alcohol concentration of 0.04 or more  
 18 -- hearing. (1) A person whose blood alcohol concentration  
 19 is 0.04 or more while he drives or is in actual physical  
 20 control of a commercial motor vehicle is subject to the  
 21 suspension of his commercial vehicle operator's endorsement.  
 22 If the department receives a sworn report from a peace  
 23 officer that the person was operating a commercial motor  
 24 vehicle while his blood alcohol concentration was 0.04 or  
 25 more, the department shall suspend the driver's commercial

1 vehicle operator's endorsement:

2 (a) for 1 year, with no provision for a restricted  
3 probationary license or endorsement, upon receipt of the  
4 first report, except that if the offense occurred in a  
5 commercial motor vehicle transporting hazardous materials,  
6 the suspension must be for 3 years; and

7 (b) for ~~10--years~~ life, with no provision for a  
8 restricted probationary license or endorsement, upon receipt  
9 of a second or subsequent report at any time as determined  
10 from the records of the department, unless a restricted  
11 license or endorsement is allowed by federal rules governing  
12 commercial drivers.

13 (2) A peace officer who determines that a commercial  
14 ~~motor vehicle operator's blood alcohol concentration is 0.04~~  
15 ~~or more~~ operator has any measured amount or detected  
16 presence of alcohol in his body WHILE OPERATING A COMMERCIAL  
17 MOTOR VEHICLE shall place the commercial motor vehicle  
18 operator out of service as mandated by federal regulations  
19 for 24 hours.

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

24 (4) The department shall immediately notify in writing  
25 any person whose commercial vehicle operator's endorsement

1 is suspended under this section. The person suspended has  
2 the right to file a petition within 30 days after the notice  
3 is given for a hearing in the matter in the district court  
4 in the county in which the finding of blood alcohol  
5 concentration was made. The court has jurisdiction and  
6 shall set the matter for hearing upon 10 days' written  
7 notice to the county attorney of the county in which the  
8 appeal is filed. The county attorney shall represent the  
9 state. The court shall take testimony and examine the facts  
10 of the case, except that the issue is limited to whether the  
11 person was driving or had actual physical control of a  
12 commercial motor vehicle while his blood alcohol  
13 concentration was 0.04 or more. The court shall determine  
14 whether the petitioner is entitled to a commercial vehicle  
15 operator's endorsement or is subject to suspension as  
16 provided in this section. The provisions of 61-8-404 apply  
17 to any proceedings under this section."

18 **Section 4.** Section 61-8-806, MCA, is amended to read:

19 "61-8-806. Chemical blood, breath, or urine tests of  
20 commercial vehicle operators -- procedure -- suspension. (1)  
21 A person who operates a commercial motor vehicle upon the  
22 ways of this state open to the public is considered to have  
23 given consent, subject to the provisions of 61-8-401 and  
24 61-8-805, to a chemical test of his blood, breath, or urine  
25 for the purpose of determining the alcohol content of his

1 blood if he is requested to submit to the test by a peace  
 2 officer having reasonable grounds to believe the person to  
 3 have been driving or in actual physical control of a  
 4 commercial motor vehicle upon the ways of this state open to  
 5 the public ~~while his blood-alcohol-concentration was 0.04 or~~  
 6 ~~more with any measured amount or detected presence of~~  
 7 ~~alcohol in his body.~~ The peace officer may designate a  
 8 blood, breath, or urine test to be administered.

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

12 (3) If a commercial motor vehicle operator who is a  
 13 resident of Montana refuses upon the request of a peace  
 14 officer to submit to a chemical test designated by the  
 15 officer as provided in subsection (1), the test may not be  
 16 given. On behalf of the department, the officer shall  
 17 immediately seize the person's driver's license showing the  
 18 commercial vehicle operator's endorsement and forward the  
 19 license to the department, along with a sworn report that he  
 20 had reasonable grounds to believe the person had been  
 21 driving or was in actual physical control of a commercial  
 22 motor vehicle upon ways of this state open to the public  
 23 while having ~~a blood-alcohol-concentration of 0.04 or more~~  
 24 ~~any measured amount or detected presence of alcohol in his~~  
 25 ~~body~~ and that the person had refused to submit to the test

1 upon the request of the officer. Upon receipt of the  
 2 report, the department shall suspend the license for a  
 3 period provided in subsection (5).

4 (4) Upon seizure of a resident's driver's license  
 5 showing a commercial vehicle operator's endorsement, the  
 6 peace officer shall issue, on behalf of the department, a  
 7 temporary driving permit without the commercial vehicle  
 8 operator's endorsement. The temporary driving permit is  
 9 valid for 72 hours after issuance.

10 (5) If a commercial motor vehicle operator refuses to  
 11 submit to a chemical test as provided in subsection (3), the  
 12 department shall suspend his commercial vehicle operator's  
 13 endorsement:

14 (a) upon first refusal, for 1 year, with no provision  
 15 for a restricted probationary license or endorsement, except  
 16 that if the offense occurred in a commercial motor vehicle  
 17 transporting hazardous materials, the suspension for a first  
 18 refusal must be for 3 years;

19 (b) upon a second or subsequent refusal at any time as  
 20 determined from the records of the department, for ~~10-years~~  
 21 LIFE, with no provision for a restricted probationary  
 22 license or endorsement unless allowed by federal rules  
 23 governing commercial drivers.

24 (6) A nonresident commercial motor vehicle operator who  
 25 refuses to submit to a chemical test as provided in

1 subsection (3) is subject to suspension by the department as  
 2 provided in subsection (5) and may receive a temporary  
 3 driving permit as provided in subsection (4)."

4 NEW SECTION. Section 5. Leaving the scene of an  
 5 accident involving commercial motor vehicle -- suspension.  
 6 Upon receipt of information that a commercial motor vehicle  
 7 operator has been convicted of an offense under 61-7-103,  
 8 61-7-104, or 61-7-106 while operating a commercial motor  
 9 vehicle, the department shall suspend the driver's  
 10 commercial motor vehicle endorsement as provided in ~~61-8-803~~  
 11 [SECTION 7].

12 NEW SECTION. Section 6. Suspension of commercial  
 13 vehicle operator's endorsement -- felony involving a  
 14 commercial motor vehicle. Upon receipt of information that a  
 15 commercial motor vehicle operator has been convicted of  
 16 using a commercial motor vehicle in the commission of a  
 17 felony, the department shall suspend the driver's commercial  
 18 vehicle operator's endorsement as provided in ~~61-8-804~~  
 19 [SECTION 7].

20 NEW SECTION. Section 7. Suspension of commercial  
 21 vehicle operator's endorsement -- duration -- second or  
 22 subsequent offense. ~~The~~ UPON RECEIVING NOTICE PURSUANT TO  
 23 61-5-208, [SECTION 5], OR [SECTION 6], THE department shall  
 24 suspend an operator's commercial vehicle operator's  
 25 endorsement ~~for-life-if-the-operator-has-been-convicted-of-a~~

1 ~~second--offense--in--a--separate--incident--of--any--offense~~  
 2 ~~described--in--61-5-208(5)--or--61-8-804--through--61-8-806, AS~~  
 3 FOLLOWS:

4 (1) UPON NOTICE OF A FIRST CONVICTION, FOR 1 YEAR, WITH  
 5 NO PROVISION FOR A PROBATIONARY LICENSE, EXCEPT THAT IF THE  
 6 OFFENSE OCCURRED WHILE OPERATING A COMMERCIAL MOTOR VEHICLE  
 7 TRANSPORTING HAZARDOUS MATERIAL, THE SUSPENSION MUST BE FOR  
 8 3 YEARS;

9 (2) UPON NOTICE OF A SECOND CONVICTION, AS DETERMINED  
 10 FROM THE RECORDS OF THE DEPARTMENT, FOR LIFE, WITH NO  
 11 PROVISION FOR A RESTRICTED LICENSE OR ENDORSEMENT UNLESS  
 12 ALLOWED BY FEDERAL RULES GOVERNING COMMERCIAL DRIVERS; AND

13 (3) UPON NOTICE OF A THIRD CONVICTION, AN OPERATOR'S  
 14 COMMERCIAL VEHICLE ENDORSEMENT MUST BE SUSPENDED FOR LIFE  
 15 AND THE OPERATOR IS INELIGIBLE FOR REINSTATEMENT.

16 NEW SECTION. Section 8. Codification instruction.  
 17 [Sections 5 through 7] are intended to be codified as an  
 18 integral part of Title 61, chapter 8, part 8, and the  
 19 provisions of Title 61, chapter 8, part 8, apply to  
 20 [sections 5 through 7].

-End-

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2 INTRODUCED BY J. RICE

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

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7 FEDERAL MANDATES; REMOVING THE AUTHORITY OF A PERSON WITH A  
8 COMMERCIAL VEHICLE OPERATOR'S ENDORSEMENT TO HAUL HAZARDOUS  
9 MATERIALS; RAISING FROM 10 YEARS TO LIFE THE MAXIMUM  
10 ADMINISTRATIVE SUSPENSION FOR OPERATING A COMMERCIAL MOTOR  
11 VEHICLE WITH A BLOOD ALCOHOL CONTENT OF OVER 0.04%; REDUCING  
12 FROM 0.04% TO ANY MEASURABLE AMOUNT THE MINIMUM BLOOD  
13 ALCOHOL CONTENT LEVEL FOR TESTING UNDER THE IMPLIED CONSENT  
14 STATUTE AND FOR TEMPORARILY REMOVING A COMMERCIAL MOTOR  
15 VEHICLE OPERATOR FROM SERVICE; PROVIDING THAT THE  
16 SUSPENSIONS CALLED FOR IN THE COMMERCIAL OPERATOR STATUTES  
17 FOR SECOND OR SUBSEQUENT OFFENSES BE IMPOSED FOR ANY  
18 COMBINATION OF OFFENSES CALLING FOR SUSPENSION; PROVIDING  
19 FOR SEPARATE OFFENSES OF DRIVING UNDER THE INFLUENCE,  
20 OPERATING WITH A BLOOD ALCOHOL CONTENT OF 0.04% OR MORE,  
21 LEAVING THE SCENE OF AN ACCIDENT WHILE OPERATING A  
22 COMMERCIAL MOTOR VEHICLE, OR USING A COMMERCIAL MOTOR  
23 VEHICLE IN THE COMMISSION OF A FELONY; AND AMENDING SECTIONS  
24 61-1-135, 61-5-208, 61-8-805, AND 61-8-806, MCA."  
25

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

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

3 **"61-1-135. Commercial vehicle operator's endorsement.**  
4 "Commercial vehicle operator's endorsement" means an  
5 endorsement to a Montana driver's license that authorizes  
6 the licensee to operate a class of commercial motor vehicle.  
7 ~~However, if the applicant's vehicle does not otherwise~~  
8 ~~require a commercial vehicle operator's endorsement, a~~  
9 ~~hazardous material endorsement may be substituted for the~~  
10 ~~commercial vehicle operator's endorsement."~~

11 **Section 2.** Section 61-5-208, MCA, is amended to read:

12 **"61-5-208. Period of suspension or revocation.** (1) The  
13 department may not suspend or revoke a driver's license,  
14 commercial vehicle operator's endorsement, or privilege to  
15 drive a motor vehicle on the public highways for a period of  
16 more than 1 year, except as otherwise permitted under  
17 ~~subsection (2) of this section, 61-5-207, 61-5-212,~~  
18 ~~61-6-123, 61-8-803 through 61-8-805, and 61-11-211~~ by law.

19 (2) A person whose license, commercial vehicle  
20 operator's endorsement, or privilege to drive a motor  
21 vehicle on the public highways has been suspended or revoked  
22 is not entitled to have the license, endorsement, or  
23 privilege renewed or restored unless the revocation was for  
24 a cause which has been removed, except that after the  
25 expiration of the period of the revocation or suspension,

1 the person may make application for a new license or  
 2 endorsement as provided by law but the department may not  
 3 issue a new license or endorsement unless and until it is  
 4 satisfied, after investigation of the driving ability of the  
 5 person and upon a showing by its records or other sufficient  
 6 evidence, that the person is eligible to be licensed to  
 7 drive in Montana. When any person is convicted or forfeits  
 8 bail or collateral not vacated for the offense of operating  
 9 or being in actual physical control of a motor vehicle while  
 10 under the influence of alcohol or any drug or a combination  
 11 thereof or for the offense of operation of a motor vehicle  
 12 by a person with alcohol concentration of 0.10 or more, the  
 13 department shall, upon receiving a report of conviction or  
 14 forfeiture of bail or collateral not vacated, suspend the  
 15 license, including any commercial vehicle operator's  
 16 endorsement, or driving privilege of the person for a period  
 17 of 6 months. Upon receiving a report of a conviction or  
 18 forfeiture of bail or collateral for a second, third, or  
 19 subsequent offense within 5 years of the first offense, the  
 20 department shall revoke the license, commercial vehicle  
 21 operator's endorsement, or driving privilege of the person  
 22 for a period of 1 year, except that if the 1-year period  
 23 passes and the person has not completed an alcohol  
 24 information course, treatment, or both, as ordered by the  
 25 sentencing court, the license revocation remains in effect

1 until the course, treatment, or both are completed.

2 (3) The period for all revocations made mandatory by  
 3 61-5-205 is 1 year except as provided in subsection (2).

4 (4) The period of revocation for any person convicted  
 5 of any offense which makes mandatory the revocation of the  
 6 driver's license commences from date of conviction or  
 7 forfeiture of bail.

8 (5) If a person is convicted of a violation of 61-8-401  
 9 or 61-8-406 while operating a commercial motor vehicle, the  
 10 department shall suspend the person's driver's license as  
 11 provided in subsection (2). In addition, the department  
 12 shall suspend the person's commercial vehicle operator's  
 13 endorsement in accordance with the provisions of this  
 14 section TITLE."

15 **Section 3.** Section 61-8-805, MCA, is amended to read:

16 **"61-8-805. Suspension for operating a commercial**  
 17 **vehicle with a blood alcohol concentration of 0.04 or more**  
 18 **-- hearing.** (1) A person whose blood alcohol concentration  
 19 is 0.04 or more while he drives or is in actual physical  
 20 control of a commercial motor vehicle is subject to the  
 21 suspension of his commercial vehicle operator's endorsement.  
 22 If the department receives a sworn report from a peace  
 23 officer that the person was operating a commercial motor  
 24 vehicle while his blood alcohol concentration was 0.04 or  
 25 more, the department shall suspend the driver's commercial

1 vehicle operator's endorsement:

2 (a) for 1 year, with no provision for a restricted  
3 probationary license or endorsement, upon receipt of the  
4 first report, except that if the offense occurred in a  
5 commercial motor vehicle transporting hazardous materials,  
6 the suspension must be for 3 years; and

7 (b) for ~~10--years~~ life, with no provision for a  
8 restricted probationary license or endorsement, upon receipt  
9 of a second or subsequent report at any time as determined  
10 from the records of the department, unless a restricted  
11 license or endorsement is allowed by federal rules governing  
12 commercial drivers.

13 (2) A peace officer who determines that a commercial  
14 motor vehicle ~~operator's blood alcohol concentration is 0.04~~  
15 ~~or more~~ operator has any measured amount or detected  
16 presence of alcohol in his body WHILE OPERATING A COMMERCIAL  
17 MOTOR VEHICLE shall place the commercial motor vehicle  
18 operator out of service as mandated by federal regulations  
19 for 24 hours.

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

24 (4) The department shall immediately notify in writing  
25 any person whose commercial vehicle operator's endorsement

1 is suspended under this section. The person suspended has  
2 the right to file a petition within 30 days after the notice  
3 is given for a hearing in the matter in the district court  
4 in the county in which the finding of blood alcohol  
5 concentration was made. The court has jurisdiction and  
6 shall set the matter for hearing upon 10 days' written  
7 notice to the county attorney of the county in which the  
8 appeal is filed. The county attorney shall represent the  
9 state. The court shall take testimony and examine the facts  
10 of the case, except that the issue is limited to whether the  
11 person was driving or had actual physical control of a  
12 commercial motor vehicle while his blood alcohol  
13 concentration was 0.04 or more. The court shall determine  
14 whether the petitioner is entitled to a commercial vehicle  
15 operator's endorsement or is subject to suspension as  
16 provided in this section. The provisions of 61-8-404 apply  
17 to any proceedings under this section."

18 **Section 4.** Section 61-8-806, MCA, is amended to read:

19 **"61-8-806. Chemical blood, breath, or urine tests of**  
20 **commercial vehicle operators -- procedure -- suspension. (1)**  
21 A person who operates a commercial motor vehicle upon the  
22 ways of this state open to the public is considered to have  
23 given consent, subject to the provisions of 61-8-401 and  
24 61-8-805, to a chemical test of his blood, breath, or urine  
25 for the purpose of determining the alcohol content of his

1 blood if he is requested to submit to the test by a peace  
 2 officer having reasonable grounds to believe the person to  
 3 have been driving or in actual physical control of a  
 4 commercial motor vehicle upon the ways of this state open to  
 5 the public ~~while his blood-alcohol-concentration-was-0.04-or~~  
 6 ~~more with any measured amount or detected presence of~~  
 7 ~~alcohol in his body.~~ The peace officer may designate a  
 8 blood, breath, or urine test to be administered.

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

12 (3) If a commercial motor vehicle operator who is a  
 13 resident of Montana refuses upon the request of a peace  
 14 officer to submit to a chemical test designated by the  
 15 officer as provided in subsection (1), the test may not be  
 16 given. On behalf of the department, the officer shall  
 17 immediately seize the person's driver's license showing the  
 18 commercial vehicle operator's endorsement and forward the  
 19 license to the department, along with a sworn report that he  
 20 had reasonable grounds to believe the person had been  
 21 driving or was in actual physical control of a commercial  
 22 motor vehicle upon ways of this state open to the public  
 23 while having ~~a blood-alcohol-concentration-of-0.04-or-more~~  
 24 ~~any measured amount or detected presence of alcohol in his~~  
 25 ~~body~~ and that the person had refused to submit to the test

1 upon the request of the officer. Upon receipt of the  
 2 report, the department shall suspend the license for a  
 3 period provided in subsection (5).

4 (4) Upon seizure of a resident's driver's license  
 5 showing a commercial vehicle operator's endorsement, the  
 6 peace officer shall issue, on behalf of the department, a  
 7 temporary driving permit without the commercial vehicle  
 8 operator's endorsement. The temporary driving permit is  
 9 valid for 72 hours after issuance.

10 (5) If a commercial motor vehicle operator refuses to  
 11 submit to a chemical test as provided in subsection (3), the  
 12 department shall suspend his commercial vehicle operator's  
 13 endorsement:

14 (a) upon first refusal, for 1 year, with no provision  
 15 for a restricted probationary license or endorsement, except  
 16 that if the offense occurred in a commercial motor vehicle  
 17 transporting hazardous materials, the suspension for a first  
 18 refusal must be for 3 years;

19 (b) upon a second or subsequent refusal at any time as  
 20 determined from the records of the department, for ~~10-years~~  
 21 LIFE, with no provision for a restricted probationary  
 22 license or endorsement unless allowed by federal rules  
 23 governing commercial drivers.

24 (6) A nonresident commercial motor vehicle operator who  
 25 refuses to submit to a chemical test as provided in



1 subsection (3) is subject to suspension by the department as  
2 provided in subsection (5) and may receive a temporary  
3 driving permit as provided in subsection (4)."

4 NEW SECTION. Section 5. Leaving the scene of an  
5 accident involving commercial motor vehicle -- suspension.  
6 Upon receipt of information that a commercial motor vehicle  
7 operator has been convicted of an offense under 61-7-103,  
8 61-7-104, or 61-7-106 while operating a commercial motor  
9 vehicle, the department shall suspend the driver's  
10 commercial motor vehicle endorsement as provided in ~~61-8-803~~  
11 [SECTION 7].

12 NEW SECTION. Section 6. Suspension of commercial  
13 vehicle operator's endorsement -- felony involving a  
14 commercial motor vehicle. Upon receipt of information that a  
15 commercial motor vehicle operator has been convicted of  
16 using a commercial motor vehicle in the commission of a  
17 felony, the department shall suspend the driver's commercial  
18 vehicle operator's endorsement as provided in ~~61-8-804~~  
19 [SECTION 7].

20 NEW SECTION. Section 7. Suspension of commercial  
21 vehicle operator's endorsement -- duration -- second or  
22 subsequent offense. The UPON RECEIVING NOTICE PURSUANT TO  
23 61-5-208, [SECTION 5], OR [SECTION 6], THE department shall  
24 suspend an operator's commercial vehicle operator's  
25 endorsement ~~for-life-if-the-operator-has-been-convicted-of-a~~

1 ~~second--offense--in--a--separate--incident--of--any--offense~~  
2 ~~described--in--61-5-208(5)--or-61-8-804-through-61-8-806, AS~~  
3 FOLLOWS:

4 (1) UPON NOTICE OF A FIRST CONVICTION, FOR 1 YEAR, WITH  
5 NO PROVISION FOR A PROBATIONARY LICENSE, EXCEPT THAT IF THE  
6 OFFENSE OCCURRED WHILE OPERATING A COMMERCIAL MOTOR VEHICLE  
7 TRANSPORTING HAZARDOUS MATERIAL, THE SUSPENSION MUST BE FOR  
8 3 YEARS;

9 (2) UPON NOTICE OF A SECOND CONVICTION, AS DETERMINED  
10 FROM THE RECORDS OF THE DEPARTMENT, FOR LIFE, WITH NO  
11 PROVISION FOR A RESTRICTED LICENSE OR ENDORSEMENT UNLESS  
12 ALLOWED BY FEDERAL RULES GOVERNING COMMERCIAL DRIVERS; AND

13 (3) UPON NOTICE OF A THIRD CONVICTION, AN OPERATOR'S  
14 COMMERCIAL VEHICLE ENDORSEMENT MUST BE SUSPENDED FOR LIFE  
15 AND THE OPERATOR IS INELIGIBLE FOR REINSTATEMENT.

16 NEW SECTION. Section 8. Codification instruction.  
17 [Sections 5 through 7] are intended to be codified as an  
18 integral part of Title 61, chapter 8, part 8, and the  
19 provisions of Title 61, chapter 8, part 8, apply to  
20 [sections 5 through 7].

-End-

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 28, 1991 1:41 pm

Mr. Chairman: I move to amend House Bill No. 572 (third reading copy -- blue) as follows:

1. Title, lines 13 and 14.

Following: "LEVEL" on line 13

Strike: "FOR" on line 13 through "AND" on line 14

2. Page 7, lines 6 and 7.

Strike: "with" on line 6 through "body" on line 7

Insert: "while his blood alcohol concentration was 0.04 or more"

3. Page 7, lines 24 and 25.

Strike: "any" on line 24 through "body" on line 25

Insert: "a blood alcohol concentration of 0.04 or more"

ADOPT

REJECT

Signed: Bill Farrell  
Senator Farrell

*JA* 3-28-91  
And. Coord.

SB 3/28  
Sec. of Senate

SENATE  
HB 572

1 HOUSE BILL NO. 572

2 INTRODUCED BY J. RICE

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE COMMERCIAL  
 6 MOTOR VEHICLE OPERATOR LICENSING STATUTES TO COMPLY WITH  
 7 FEDERAL MANDATES; REMOVING THE AUTHORITY OF A PERSON WITH A  
 8 COMMERCIAL VEHICLE OPERATOR'S ENDORSEMENT TO HAUL HAZARDOUS  
 9 MATERIALS; RAISING FROM 10 YEARS TO LIFE THE MAXIMUM  
 10 ADMINISTRATIVE SUSPENSION FOR OPERATING A COMMERCIAL MOTOR  
 11 VEHICLE WITH A BLOOD ALCOHOL CONTENT OF OVER 0.04%; REDUCING  
 12 FROM 0.04% TO ANY MEASURABLE AMOUNT THE MINIMUM BLOOD  
 13 ALCOHOL CONTENT LEVEL FOR TESTING UNDER THE IMPLIED CONSENT  
 14 STATUTE AND FOR TEMPORARILY REMOVING A COMMERCIAL MOTOR  
 15 VEHICLE OPERATOR FROM SERVICE; PROVIDING THAT THE  
 16 SUSPENSIONS CALLED FOR IN THE COMMERCIAL OPERATOR STATUTES  
 17 FOR SECOND OR SUBSEQUENT OFFENSES BE IMPOSED FOR ANY  
 18 COMBINATION OF OFFENSES CALLING FOR SUSPENSION; PROVIDING  
 19 FOR SEPARATE OFFENSES OF DRIVING UNDER THE INFLUENCE,  
 20 OPERATING WITH A BLOOD ALCOHOL CONTENT OF 0.04% OR MORE,  
 21 LEAVING THE SCENE OF AN ACCIDENT WHILE OPERATING A  
 22 COMMERCIAL MOTOR VEHICLE, OR USING A COMMERCIAL MOTOR  
 23 VEHICLE IN THE COMMISSION OF A FELONY; AND AMENDING SECTIONS  
 24 61-1-135, 61-5-208, 61-8-805, AND 61-8-806, MCA."  
 25

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

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 4 "Commercial vehicle operator's endorsement" means an  
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 6 the licensee to operate a class of commercial motor vehicle.  
 7 However, if the applicant's vehicle does not otherwise  
 8 require a commercial vehicle operator's endorsement, a  
 9 hazardous material endorsement may be substituted for the  
 10 commercial vehicle operator's endorsement."

11 **Section 2.** Section 61-5-208, MCA, is amended to read:

12 "61-5-208. Period of suspension or revocation. (1) The  
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 15 drive a motor vehicle on the public highways for a period of  
 16 more than 1 year, except as otherwise permitted under  
 17 subsection (2) of this section, 61-5-207, 61-5-212,  
 18 61-6-123, 61-8-803 through 61-8-805, and 61-11-211 by law.

19 (2) A person whose license, commercial vehicle  
 20 operator's endorsement, or privilege to drive a motor  
 21 vehicle on the public highways has been suspended or revoked  
 22 is not entitled to have the license, endorsement, or  
 23 privilege renewed or restored unless the revocation was for  
 24 a cause which has been removed, except that after the  
 25 expiration of the period of the revocation or suspension,

1 the person may make application for a new license or  
 2 endorsement as provided by law but the department may not  
 3 issue a new license or endorsement unless and until it is  
 4 satisfied, after investigation of the driving ability of the  
 5 person and upon a showing by its records or other sufficient  
 6 evidence, that the person is eligible to be licensed to  
 7 drive in Montana. When any person is convicted or forfeits  
 8 bail or collateral not vacated for the offense of operating  
 9 or being in actual physical control of a motor vehicle while  
 10 under the influence of alcohol or any drug or a combination  
 11 thereof or for the offense of operation of a motor vehicle  
 12 by a person with alcohol concentration of 0.10 or more, the  
 13 department shall, upon receiving a report of conviction or  
 14 forfeiture of bail or collateral not vacated, suspend the  
 15 license, including any commercial vehicle operator's  
 16 endorsement, or driving privilege of the person for a period  
 17 of 6 months. Upon receiving a report of a conviction or  
 18 forfeiture of bail or collateral for a second, third, or  
 19 subsequent offense within 5 years of the first offense, the  
 20 department shall revoke the license, commercial vehicle  
 21 operator's endorsement, or driving privilege of the person  
 22 for a period of 1 year, except that if the 1-year period  
 23 passes and the person has not completed an alcohol  
 24 information course, treatment, or both, as ordered by the  
 25 sentencing court, the license revocation remains in effect

1 until the course, treatment, or both are completed.

2 (3) The period for all revocations made mandatory by  
 3 61-5-205 is 1 year except as provided in subsection (2).

4 (4) The period of revocation for any person convicted  
 5 of any offense which makes mandatory the revocation of the  
 6 driver's license commences from date of conviction or  
 7 forfeiture of bail.

8 (5) If a person is convicted of a violation of 61-8-401  
 9 or 61-8-406 while operating a commercial motor vehicle, the  
 10 department shall suspend the person's driver's license as  
 11 provided in subsection (2). In addition, the department  
 12 shall suspend the person's commercial vehicle operator's  
 13 endorsement in accordance with the provisions of this  
 14 section TITLE."

15 Section 3. Section 61-8-805, MCA, is amended to read:

16 "61-8-805. Suspension for operating a commercial  
 17 vehicle with a blood alcohol concentration of 0.04 or more  
 18 -- hearing. (1) A person whose blood alcohol concentration  
 19 is 0.04 or more while he drives or is in actual physical  
 20 control of a commercial motor vehicle is subject to the  
 21 suspension of his commercial vehicle operator's endorsement.  
 22 If the department receives a sworn report from a peace  
 23 officer that the person was operating a commercial motor  
 24 vehicle while his blood alcohol concentration was 0.04 or  
 25 more, the department shall suspend the driver's commercial

1 vehicle operator's endorsement:

2 (a) for 1 year, with no provision for a restricted  
3 probationary license or endorsement, upon receipt of the  
4 first report, except that if the offense occurred in a  
5 commercial motor vehicle transporting hazardous materials,  
6 the suspension must be for 3 years; and

7 (b) for ~~10--years~~ life, with no provision for a  
8 restricted probationary license or endorsement, upon receipt  
9 of a second or subsequent report at any time as determined  
10 from the records of the department, unless a restricted  
11 license or endorsement is allowed by federal rules governing  
12 commercial drivers.

13 (2) A peace officer who determines that a commercial  
14 ~~motor vehicle operator's blood-alcohol-concentration is 0.04~~  
15 ~~or more operator has any measured amount or detected~~  
16 presence of alcohol in his body WHILE OPERATING A COMMERCIAL  
17 MOTOR VEHICLE shall place the commercial motor vehicle  
18 operator out of service as mandated by federal regulations  
19 for 24 hours.

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

24 (4) The department shall immediately notify in writing  
25 any person whose commercial vehicle operator's endorsement

1 is suspended under this section. The person suspended has  
2 the right to file a petition within 30 days after the notice  
3 is given for a hearing in the matter in the district court  
4 in the county in which the finding of blood alcohol  
5 concentration was made. The court has jurisdiction and  
6 shall set the matter for hearing upon 10 days' written  
7 notice to the county attorney of the county in which the  
8 appeal is filed. The county attorney shall represent the  
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11 person was driving or had actual physical control of a  
12 commercial motor vehicle while his blood alcohol  
13 concentration was 0.04 or more. The court shall determine  
14 whether the petitioner is entitled to a commercial vehicle  
15 operator's endorsement or is subject to suspension as  
16 provided in this section. The provisions of 61-8-404 apply  
17 to any proceedings under this section."

18 **Section 4.** Section 61-8-806, MCA, is amended to read:

19 "61-8-806. Chemical blood, breath, or urine tests of  
20 commercial vehicle operators -- procedure -- suspension. (1)  
21 A person who operates a commercial motor vehicle upon the  
22 ways of this state open to the public is considered to have  
23 given consent, subject to the provisions of 61-8-401 and  
24 61-8-805, to a chemical test of his blood, breath, or urine  
25 for the purpose of determining the alcohol content of his

1 blood if he is requested to submit to the test by a peace  
 2 officer having reasonable grounds to believe the person to  
 3 have been driving or in actual physical control of a  
 4 commercial motor vehicle upon the ways of this state open to  
 5 the public ~~while his blood alcohol concentration was 0.04 or~~  
 6 ~~more with any measured amount or detected presence of~~  
 7 ~~alcohol in his body~~ WHILE HIS BLOOD ALCOHOL CONCENTRATION  
 8 WAS 0.04 OR MORE. The peace officer may designate a blood,  
 9 breath, or urine test to be administered.

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

13 (3) If a commercial motor vehicle operator who is a  
 14 resident of Montana refuses upon the request of a peace  
 15 officer to submit to a chemical test designated by the  
 16 officer as provided in subsection (1), the test may not be  
 17 given. On behalf of the department, the officer shall  
 18 immediately seize the person's driver's license showing the  
 19 commercial vehicle operator's endorsement and forward the  
 20 license to the department, along with a sworn report that he  
 21 had reasonable grounds to believe the person had been  
 22 driving or was in actual physical control of a commercial  
 23 motor vehicle upon ways of this state open to the public  
 24 while having ~~a blood alcohol concentration of 0.04 or more~~  
 25 ~~any measured amount or detected presence of alcohol in his~~

1 body A BLOOD ALCOHOL CONCENTRATION OF 0.04 OR MORE and that  
 2 the person had refused to submit to the test upon the  
 3 request of the officer. Upon receipt of the report, the  
 4 department shall suspend the license for a period provided  
 5 in subsection (5).

6 (4) Upon seizure of a resident's driver's license  
 7 showing a commercial vehicle operator's endorsement, the  
 8 peace officer shall issue, on behalf of the department, a  
 9 temporary driving permit without the commercial vehicle  
 10 operator's endorsement. The temporary driving permit is  
 11 valid for 72 hours after issuance.

12 (5) If a commercial motor vehicle operator refuses to  
 13 submit to a chemical test as provided in subsection (3), the  
 14 department shall suspend his commercial vehicle operator's  
 15 endorsement:

16 (a) upon first refusal, for 1 year, with no provision  
 17 for a restricted probationary license or endorsement, except  
 18 that if the offense occurred in a commercial motor vehicle  
 19 transporting hazardous materials, the suspension for a first  
 20 refusal must be for 3 years;

21 (b) upon a second or subsequent refusal at any time as  
 22 determined from the records of the department, for ~~10~~-years  
 23 LIFE, with no provision for a restricted probationary  
 24 license or endorsement unless allowed by federal rules  
 25 governing commercial drivers.

1 (6) A nonresident commercial motor vehicle operator who  
 2 refuses to submit to a chemical test as provided in  
 3 subsection (3) is subject to suspension by the department as  
 4 provided in subsection (5) and may receive a temporary  
 5 driving permit as provided in subsection (4)."

6 NEW SECTION. Section 5. Leaving the scene of an  
 7 accident involving commercial motor vehicle -- suspension.  
 8 Upon receipt of information that a commercial motor vehicle  
 9 operator has been convicted of an offense under 61-7-103,  
 10 61-7-104, or 61-7-106 while operating a commercial motor  
 11 vehicle, the department shall suspend the driver's  
 12 commercial motor vehicle endorsement as provided in 61-8-803  
 13 [SECTION 7].

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 15 vehicle operator's endorsement -- felony involving a  
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 17 commercial motor vehicle operator has been convicted of  
 18 using a commercial motor vehicle in the commission of a  
 19 felony, the department shall suspend the driver's commercial  
 20 vehicle operator's endorsement as provided in 61-8-804  
 21 [SECTION 7].

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 23 vehicle operator's endorsement -- duration -- second or  
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 3 ~~second--offense--in--a--separate--incident--of--any--offense~~  
 4 ~~described--in--61-5-208(5)--or--61-8-804--through--61-8-806, AS~~  
 5 FOLLOWS:

6 (1) UPON NOTICE OF A FIRST CONVICTION, FOR 1 YEAR, WITH  
 7 NO PROVISION FOR A PROBATIONARY LICENSE, EXCEPT THAT IF THE  
 8 OFFENSE OCCURRED WHILE OPERATING A COMMERCIAL MOTOR VEHICLE  
 9 TRANSPORTING HAZARDOUS MATERIAL, THE SUSPENSION MUST BE FOR  
 10 3 YEARS;

11 (2) UPON NOTICE OF A SECOND CONVICTION, AS DETERMINED  
 12 FROM THE RECORDS OF THE DEPARTMENT, FOR LIFE, WITH NO  
 13 PROVISION FOR A RESTRICTED LICENSE OR ENDORSEMENT UNLESS  
 14 ALLOWED BY FEDERAL RULES GOVERNING COMMERCIAL DRIVERS; AND

15 (3) UPON NOTICE OF A THIRD CONVICTION, AN OPERATOR'S  
 16 COMMERCIAL VEHICLE ENDORSEMENT MUST BE SUSPENDED FOR LIFE  
 17 AND THE OPERATOR IS INELIGIBLE FOR REINSTATEMENT.

18 NEW SECTION. Section 8. Codification instruction.  
 19 [Sections 5 through 7] are intended to be codified as an  
 20 integral part of Title 61, chapter 8, part 8, and the  
 21 provisions of Title 61, chapter 8, part 8, apply to  
 22 [sections 5 through 7].

-End-