

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By CHAIRMAN STEVE BENEDICT, on February 8, 1993,
at 9:00 A.M.

ROLL CALL

Members Present:

Rep. Steve Benedict, Chair (R)
Rep. Sonny Hanson, Vice Chair (R)
Rep. Bob Bachini (D)
Rep. Joe Barnett (R)
Rep. Ray Brandewie (R)
Rep. Vicki Cocchiarella (D)
Rep. Fritz Daily (D)
Rep. Tim Dowell (D)
Rep. Alvin Ellis (R)
Rep. Stella Jean Hansen (D)
Rep. Jack Herron (R)
Rep. Dick Knox (R)
Rep. Don Larson (D)
Rep. Norm Mills (R)
Rep. Bob Pavlovich (D)
Rep. Bruce Simon (R)
Rep. Carley Tuss (X) (D)
Rep. Doug Wagner (R)

Members Excused: All Present

Members Absent: None

Staff Present: Paul Verdon, Legislative Council
Claudia Johnson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 271 and HB 349
Executive Action: HB 222 AND HB 349

HEARING ON HB 271

Opening Statement by Sponsor:

REP. DON LARSON, House District 65, Seeley, opened stating that
HB 271 had been taken care of at the bargaining table and asked

the committee to table HB 271.

Proponents' Testimony:

None

Opponents' Testimony:

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

None

EXECUTIVE ACTION ON HB 271

Motion: REP. RAY BRANDEWIE MOVED HB 271 BE TABLED.

Discussion: None

Motion/Vote: The question was called. Voice vote was taken.
Motion CARRIED unanimously.

Vote: HB 271 BE TABLED. Motion CARRIED 18 - 0.

HEARING ON HB 349

Opening Statement by Sponsor:

REP. WILLIAM RYAN, House District 38, Great Falls, said HB 349 is an act prohibiting an insurer from considering off-the-job driving records of employees with respect to issuing, renewing canceling or setting rates for the employer's commercial motor vehicle insurance policy. He said there is a different set of ethics when working for an employer than the rules of driving a personal vehicle. Rep. Ryan said his job is locating work for apprentices all over Montana. The apprentices are good employees, but some of their driving records off the job keep them from employment. The insurance companies have annual checks and if they find that a person has a blemish on their driving record, they will contact the employer and inform them that a certain individual cannot drive the company vehicle or their insurance rates will be raised very high and the employer is forced to let that person go rather than jeopardize losing their insurance.

Proponents' Testimony:

John Manzer, Business Representative for Teamsters Local #2, said he represents 6,000 members in the state of Montana. Within the 6,000 members, 60% would be effected by this legislation. He said that present federal laws regarding commercial driving license (CDL) have been changed and are more rigidly enforced. Any person that has 2 moving violations while operating a commercial vehicle could be subject to losing their license up to one year. Any person operating a commercial vehicle that receives 3 moving violations could be forced into losing their CDL for life. He said people who make their living operating commercial vehicles are now placed in double jeopardy, because they could lose their jobs for moving violations while at work or they could be forced out their jobs by insurance companies dictating to employers that the insurance companies will raise the employers' rates when the employee's personal driving record away from work appears bad to the insurance company. The employer is then confronted with either paying higher insurance rates or discharging the employee. He said the Teamster's Union has taken several of these cases where this has happened to court and the Supreme Court has ruled that an employer cannot be forced to pay higher insurance rates in order to protect an employee's job, even if that employee is protected by the collective bargaining agreement. He said the Teamsters Union has been faced with insurance companies telling the employers whom they can have contracts with to either discharge the individual or their insurance rates will be increased or they will drop the insurance coverage completely if the employer does not comply with the insurance company's wishes. He urged the committee to support HB 349. **SEE EXHIBIT 1**

Stan Dupree, Journeyman Lineman, Assistant Business Manager for IBEW, Local Union 44, Butte, urged the committee members to support HB 349. He said it is a strain on the employers when they hire someone, then is informed to either let the person go or face higher insurance cost.

Ben Havdahl, Montana Motor Carriers Association (MMCA) didn't think there was a large number of employers and employees that had experienced this problem in Montana, but MMCA is supportive in the passage of HB 349. **Mr. Havdahl** presented written testimony. **SEE EXHIBIT 2**

Dave Drynan, Insurance Commissioner's Office, urged the committee to give HB 349 serious consideration for the following reasons: 1). insurance companies underwrite businesses based on commercial risks and personal risks; and 2) insurance companies issue commercial policies and personal lines policies. Personal lines policies do not, he emphasized do not, cover commercial losses, and commercial losses do not cover personal lines losses. The industry has gone to great lengths to separate the different coverages between personal lines and commercial lines. They developed underwriter's rating factors for each of these

coverages. Currently, in the state of Washington, insurance companies cannot use personal driving records to underwrite commercial risks, likewise commercial driving records cannot be used to underwrite personal lines risks. He reiterated that the insurance companies do have the ability to rate the two different policies. He said it would seem in this instance that the insurance companies have decided to use a personal lines issue on a commercial lines area to their advantage, and not to the advantage of the consumer. **Mr. Drynan** said if a commercial employer wants to hire someone with a bad personal driving record, he is putting his loss ratio experience at risk and their rates will be based on that loss experience. He asked that HB 349 be passed.

Gary Taylor, Director for the Machinists Union, said the new license and laws that are in place are detrimental to the people he represents. The employees are required to have commercial drivers license to road test equipment. He has a lot of people he represents that do not road test equipment, but if found out about a bad personal driving record, the company has to release the person or their rates will go sky high. He urged the committee to support HB 349.

Don Judge, Montana State AFL-CIO, representing employers, said it is apparent with the trade representatives before the committee today that the employers, not just the workers are paying the bill for the rating process used by current laws. He said it is not just the private sector employer that picks up the tab; the state, the counties, the cities, and the school districts pick up the tab for the insurance rating system that is currently in place. **Mr. Judge** said HB 349 will help employers hold down the cost and avoid the agonizing decisions they are faced with, and help taxpayers hold down the costs of local government. He urged a do pass recommendation for HB 349.

Gene Fenderson, Labor Union, said for the reasons already given he is in support of HB 349 and urged a do pass.

Bill Egan, Montana Conference of Electrical Workers, (IBEW) said he represents about 4,000 workers in the state of Montana. He informed the committee they will probably hear some statistics about the increase of costs in providing insurance and the results of the people that are habitual offenders in the personal driving records. **Mr. Egan** said that current law is a cruel and unusual punishment by taking a person's livelihood away and the ability to feed his family. This also takes away the ability of control from the employer when deciding who their best employees are. When there are laws, there must be fairness and equity in those laws, rooms can be filled with books, but justice has to be served. He asked the committee to support HB 349.

Chuck Cashell, Business Agent for the International Union of Engineers #400 (IUOE), said he represents members that operate employer's equipment i.e., mechanics, oilers, foremen and

supervisors move equipment from one job site to another. He urged the committee's support for this piece of legislation.

Opponents' Testimony:

Jacqueline Lenmark, representing the American Insurance Association (AIA), said the AIA is comprised of 250 property and casualty insurers who write among other lines than the lines that are being considered in HB 349. She said this is not a good bill, because it will skew the underwriting criteria that insurance companies use to properly price the insurance policies that are issued. When this is done the employer's insurance may be reduced in price, but someone else will have to pick up the tab for that policy, the cost simply does not go away. She said it is appropriate that insurance policies be priced in this manner, because a person's personal driving record does provide a reliable indication of the risk that he/she presents whenever he/she is driving a vehicle on the road. If this bill were to pass, it would be another disincentive for safe driving and have an adverse affect on the business and the public in general. She expressed her surprise that the proponents expected to be treated differently, because they have an insufficient regard for the safety of the public to drive safely on their personal time. The proponents are asking for a guarantee for employment when they do not have sufficient regard for the safety of the children and the rest of the public on the streets. **Ms. Lenmark** said that a DUI is not a little matter to be taken lightly, regardless of how it may effect these people's livelihood; it is affecting real lives, and real children. She said the proponents talked about fairness and equity, but in the testimony of one person, it was admitted that 60% of employees they represented are driving unsafely on their personal time. There is a place for personal responsibility, and there needs to be a price for the consequence for exercising or not exercising that personal responsibility. **Ms. Lenmark** strongly urged the committee to give this bill a do not pass recommendation.

Ron Waterman, representing Farmers Insurance Companies, said they rise in opposition of this legislation. He said for the committee's information, there are underwriting evaluations in new tax that HB 349 will have. This bill will cause a ripple effect if the insurers cannot consider personal driving records on part of the individuals. The insurance companies evaluate what they charge employers for insurance, and somehow, someone, or some other component of the insurance company or rate payer will be paying those bills. He said employers are held liable for their employees conduct on the job. One of the theories of liabilities is called "respondeat superior", where an employer is acting within the course and scope of employment. The employer is responsible for all records of an employee, what an employee does on the job, and what an employee will do off the job. He said there are theories of liability that cause employers to try to find out questions about employees and what they do off of the

job. One of the theories is a concept entitled "negligent hiring and negligent supervision". If an employer is aware of the conduct of their employee then it is suggested that an employee be more closely scrutinized, because of the knowledge the employer has, the employer becomes responsible.

Greg Van Horssen, representing State Farm Insurance Companies, said for the reasons already stated by the opponents, State Farm also opposes HB 349, and urged the committee to give HB 349 this a do not pass recommendation.

Roger McGlenn, Executive Director for the Independent Insurance Agents Association of Montana, said the independent agents have concerns with this bill. The perception by insurance companies doing business in Montana is if they cannot obtain complete underwriting information to determine the risks that they are preparing to undertake, many may not provide that coverage in Montana. He said that Montana represents only 3/10ths of 1 percent of the national property/casualty premium volume. If the insurance companies feel they cannot acquire total information on driving records including personal, the companies will not be able to make commercial liability policies available in Montana. He urged the committee to seriously consider this legislation and give it a do not pass consideration.

Questions From Committee Members and Responses:

Rep. Larson asked **Ron Waterman** to address his comments regarding a person's personal driving record, whether or not if the insurance companies are judging a potential employee as guilty until proven innocent? **Mr. Waterman** said if an employer is better able to see what an employee does in personal conduct it will be a reflection of what that person will do on the job.

Rep. Larson asked **Jacqueline Lenmark** to remark on Dave Drynan, Insurance Commissioner's comment that insurers can separate or split the driving records between personal and commercial? **Ms. Lenmark** said yes, but it is not presently happening in Montana, and it is an increased cost to everyone.

Rep. Bachini asked **Ron Waterman** about the other states he mentioned that have this law on their books, how long has it been in effect? **Mr. Waterman** said it has just been recently.

Rep. Bachini asked **Greg Van Horssen** the same question. **Mr. Van Horssen** said that given the risk spreading nature of the industry it would have to increase rates in other sections of the insured population.

Rep. Sonny Hanson asked **Ron Waterman** about several of the proponents testimony stating if this law were in effect, would it become out-of-bounds for an employer to check that individual's personal driving record, and would legal ramification develop from that? **Mr. Waterman** said this bill does not speak

specifically to that, but felt it would be the next law the committee would be hearing in the next session. If an insurance company cannot take into consideration the information about personal driving practices to evaluate if that person is a risk, than the employer will not be able to look at the records of personal conduct. He said under the tort law, an employer will still have a responsibility for negligent hiring of an individual with a poor personal driving record.

Rep. Sonny Hanson asked **John Manzer, Teamster's Union** about an employee receiving several speeding tickets and wanted to know if the speeding tickets in question were for daytime or nighttime? **Mr. Manzer** replied daytime. **Rep. Hanson** asked if the daytime speeding ticket is a demerit against a CDL. **Mr. Manzer** said that was correct. If a person has a CDL, and receives two speeding tickets for speeds in excess of 65 MPH, they would lose their CDL according to federal law. **Rep. Hanson** asked if that was in-line of employment or personal. **Mr. Manzer** said it applies for either one. He felt HB 349 is aimed at determining a personal vehicle used on company time is a company vehicle. Vehicles are specifically identified under federal law where CDL's are required.

Rep. Stella Jean Hansen asked **Ron Waterman** if driving records are reviewed every year, if so, does an individual's record from the past reflect on that yearly review? **Mr. Waterman** said a yearly review is required. Some companies will take into review the past three years of a person's personal driving record.

Rep. Knox asked **Ron Waterman** if his company keeps records of employees with bad records, if so, are they kept as a different entity for underwriting purposes. **Mr. Waterman** said at present time his clients do not break down driving records with respect to personal time or company time.

Rep. Barnett asked **Jacqueline Lenmark** if an individual's personal driving record is proof, regardless of violations that person has, but does not have proof that it affects the driving record of the company, is it then assumed that person is a bad driver on private time, so the whole company will have a bad driving record on business time. **Ms. Lenmark** said yes, there is no record of distinction unless the Department of Justice sorts them out. Each violation is reviewed as an indication of a person's probability and responsibility of risk that is brought to the company that individual is employed by. **Ron Waterman** interjected. He said the insurance industry bases their rates or prediction of future conduct of what happened in the past. The companies use actuarial statistics to find out what the future will bring. He said the best predictor that insurance companies use is actuarians, have found that what is relevant to the future for people is what they have done in the past. **Mr. Waterman** did not know of any company that tracked specifically on individuals, but said actuarial predictions are made.

Rep. Ellis asked if there is statistical evidence that people with personal bad driving records have poor driving records on company time? Roger McGlenn said only data of actuarial statistics have been found that for every moving violation on an individual's driving record, the percentage for having an accident increases. Mr. McGlenn said there are many commercial vehicles i.e., that are made available for personal use and definitely has an impact on personal and commercial driving records.

Closing by Sponsor:

Rep. Ryan closed stating there is difference between personal lives and on the job lives. He said this is a good employer/employee bill. The employer is struggling as it is with higher worker compensation rates, etc. The requirements that are placed on commercial driving licenses with strict state and federal requirements, and having the license revoked by effectively taking a person off the job hinders the employers present ability to hire the people they want or to discharge them. This bill does not affect those hiring statutes at all. HB 349 states that insurance companies will not be able to hold the companies and demand ransom because of what happened in a different set of circumstances. He said the person with a bad driving record should be the one to pay the higher insurance rates not the company.

EXECUTIVE ACTION ON HB 222

Motion: REP. BRANDEWIE MOVED HB 222 DO PASS.

Discussion: Rep. Brandewie moved amendments. He went through the amendments step by step. (This is the fire extinguisher bill). EXHIBIT 3

Motion/Vote: Rep. Bachini called the question. Voice vote was taken. Motion CARRIED unanimously.

Motion/Vote: REP. BRANDEWIE MOVED HB 222 DO PASS AS AMENDED. The question was called. Voice vote was taken. Motion CARRIED unanimously.

Vote: HB 222 DO PASS AS AMENDED. Motion CARRIED 18 - 0.

EXECUTIVE ACTION ON HB 349

Motion: REP. BRANDEWIE MOVED HB 349 DO NOT PASS.

Motion: REP. BACHINI MADE A SUBSTITUTE MOTION THAT HB 349 DO PASS.

Discussion: Rep. Bachini spoke on his motion. He said the insurance companies that were represented today were not able to provide the committee with any data with the change of rates in existing states where this law is in effect. He said this is a good employer bill and wanted it to get to the floor of the House.

Rep. Sonny Hanson said he is against this bill. Most of the testimony was regarding DUI's, and a judge is going to take away that person's driving license no matter what.

Rep. Bachini said Rep. Barnett was correct in asking if this was just an assumption on the insurance industry. The industry has nothing to prove if these people violate the laws off the job, and what they do on the job. People are more conscious on the job and do things a lot differently.

Rep. Larson said he likes the accountability of this bill. The insurance commissioner, Dave Drynan, pointed out that the insurance companies have the capabilities to separate the lines of coverage. He said if the insurance companies have a problem with this bill, maybe it should be amended so the insurers can flag the person with the bad driving record, and give the company a one year grace period to see if it happens again.

Rep. Mills said he has personally been involved with this as an employer. Both the actuarians and underwriters should have been at the committee hearing today. He said the probability from an actuarial standpoint or an underwriters standpoint would carry over in their estimation and would probably rate the individual accordingly.

Motion/Vote: The question was called on the substitute DO PASS motion. Roll call vote was taken. Motion CARRIED 11 - 7 with Reps. Brandewie, Ellis, Herron, Knox, Mills, Sonny Hanson, and Chairman Steve Benedict voting no. SEE EXHIBIT 4

Vote: HB 349 DO PASS AS AMENDED. Motion CARRIED 11 - 7.

HOUSE BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

February 8, 1993

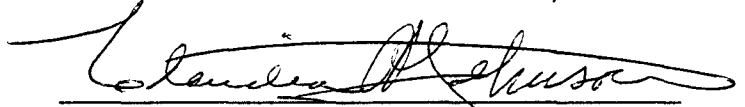
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ADJOURNMENT

Adjournment: 10:40 A.M.



STEVE BENEDICT, Chair



CLAUDIA JOHNSON, Secretary

SB/cj

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL

DATE

2-8-93

NAME	PRESENT	ABSENT	EXCUSED
REP. ALVIN ELLIS	✓		
REP. DICK KNOX	✓		
REP. NORM MILLS	✓		
REP. JOE BARNETT	✓		
REP. RAY BRANDEWIE	✓		
REP. JACK HERRON	✓		
REP. TIM DOWELL	✓		
REP. CARLEY TUSS	✓		
REP. STELLA JEAN HANSEN	✓		
REP. BOB PAVLOVICH	✓		
REP. VICKI COCCHIARELLA	✓		
REP. FRITZ DAILY	✓		
REP. BOB BACHINI	✓		
REP. DON LARSON	✓		
REP. BRUCE SIMON	✓		
REP. DOUG WAGNER	✓		
REP. SONNY HANSON, VICE CHAIRMAN	✓		
REP. STEVE BENEDICT, CHAIRMAN	✓		

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HOUSE STANDING COMMITTEE REPORT

February 8, 1993


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, 1993

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r: We, the committee on Business and Economic
t report that House Bill 349 (first reading copy --
pass .

copy --

Signed: 

Steve Benedict, Chair

Chair

ce"

7. Page 3, line 7.

Following: ";

Insert: "and"

8. Page 3, lines 9 through 12.

Following: "~~the~~" on line 9

Strike: remainder of line 9 through "(c)" on line 12

9. Page 3, line 21.

Following: line 20

Insert: "(3) The department shall:

(a) issue an endorsement to an applicant who scores a passing grade on an examination devised or approved by the department; and

(b) annually renew the endorsement upon payment of the endorsement fee and submission of satisfactory proof that the endorsee has completed continuing education, training, or testing required by the department."

10. Page 4, line 15.

Following: "license fee."

Insert: ":

(2)

Strike: "\$250"

11. Page 4, line 16.

Following: "50-39-101"

Strike: ". "

Insert: ", as follows:

(a) \$100 to service fire extinguishers;

(b) \$175 to sell, service, or install fire alarm systems;

(c) \$175 to sell, service, or install special agent fire suppression systems; and

(d) \$175 to sell, service, or install fire extinguishing systems.

(3) "

Strike: "not"

12. Page 4, lines 20 through 22.

Strike: lines 20 through 22 in their entirety

13. Page 5, line 1.

Following: page 4

Insert: "NEW SECTION. Section 7. Deposit of fees. The fees collected under 50-39-105 must be deposited in an account in the state special revenue fund to the credit of the department of justice and appropriated to the department to administer [this act].

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NEW SECTION. Section 8. Coordination instruction. If House Bill No. 207 is passed and approved and if it creates a state special revenue account to fund the fire prevention and investigation activities of the department of justice, then [section 7 of this act] is void and the fees collected under 50-39-105, as amended by [this act], must be deposited in the special revenue account created by House Bill No. 207."

Renumber: subsequent sections

14. Page 5, line 2.

Strike: "[Section 6] is"

Insert: "[Sections 6 and 7] are"

15. Page 5, line 4.

Strike: "[section 6]"

Insert: "[sections 6 and 7]"

-END-

EXHIBIT 1
DATE 2-8-93
HB 349

Mr. Chairman

Members of the Committee

My name is John Manzer. I am a Business Representative for Teamsters Local #2 and Lobbyist for Teamsters Locals #2 and #190 representing approximately 6,000 members in the State of Montana.

Within this 6,000 membership 60% of the members would be affected by this legislation.

The Federal laws regarding CDL (Commercial Drivers' License) have been changed and are now rigidly enforced. Any individual who gets two or more violations while driving a commercial vehicle could lose the CDL for up to one (1) year. Any individual with three or more violations while operating a commercial vehicle could lose the CDL for life.

People who make their living operating a commercial vehicle are now placed in double jeopardy because not only can they lose their job for moving violations while at work, they can also be forced out of their jobs by insurance companies dictating to employers that the insurance company will raise the employer's insurance rates if an employee's personal driving record (away from work) appears "bad" to the Insurance Company. The Employer is then confronted with either paying higher insurance rates or discharging the employee. The U.S. Supreme Court has ruled that

an employer cannot be forced to pay higher insurance rates in order to protect an employee's job even if the employee is protected by a collective bargaining agreement.

We, the Teamsters' Union, have been faced with the situation of insurance companies telling employers with whom we have contracts to either discharge an individual or their insurance rates will increase or they will drop the insurance coverage completely if the employer does not comply.

I have prepared several examples to point out to you the severe problem that has been created by using an employee's over-all driving record by an insurance company to dictate to an employer when the insurance company only insures the employer and employee while the employee is working.

First Example: Gallatin County Road and Bridge

(2 employees discharged as a result of
their personal driving record)

The two employees were Buzz Wilt and Steve Schneider. Mr. Wilt, who is now deceased, had two non-job related moving violations with his own vehicle. Mr. Schneider had a non-job related DUI. After a review of the employee's driving

records by an outside insurance carrier, Gallatin County was informed that if they kept these two employees in their employ, they would no longer provide insurance coverage to the County. Based on this, both employees were discharged.

After the Union's intervention, the insurance carrier agreed to provide a policy equal to the County's coverage to the affected employees for those hours said employees were utilizing the County's vehicles. As a means of retaining their jobs, both employees agreed to pay the cost of this policy out of their own pockets. I believe the cost was about \$.35 per hour per employee.

Subsequent to this, another employee, as a result of a non-job related DUI avoided discharge by agreeing to pay the cost of the insurance.

I think it is unfair that the actions of an employee's "off the job" hours can have such a tremendous impact on their employment.

Both of the men I just referred to had very good driving records with their employer and the employer did not necessarily want to take discharge action but was forced to in order to keep liability insurance for the Road and Bridge Department.

Second Example: Associated Foods, Helena, MT

7 year employee - excellent commercial driving record. DUI on personal time (Saturday afternoon). Employer tried to work this employee in Warehouse after the Insurance Company would not allow the employer to drive with threat of cancellation or raising of premiums. Due to the nature of Warehouse work (heavy lifting, lots of bending and stooping), the employee had to quit because of his age. The driver could not handle this type of work.

Third Example: Beer Distributor, Great Falls, MT

Terminated a relatively new employee when new DUI "crack down" arose several years ago because employee had a DUI on personal time before he came to work for this Employer. When the employer's insurance company reviewed the employee's driving

record the Company was told that the Insurance Company would not cover this employees because of the DUI.

Fourth Example: Zeke's Distributing - Helena, MT

Employee's job saved because the Employer was willing to work around the employee's Driver's License problem until the employee cleans up his record. This problem was created by the employee's personal driving record prior to coming to work for the present employer.

In all of the cases I have stated here today the employee's work record and driving record while on the job were clean (no violations). However, because of situations "off the job" their employment was placed in jeopardy.

Any employee, including anyone in this room, could be stopped for exceeding 65 miles per hour on Interstate highways two times or anyone could stop and have a few drinks after work or on a weekend and end up with a DUI.

If this happens to you and you work for an employer who requires a CDL or even a regular driver's license your employer may be forced to terminate you if the insurance company demands.

Every Employer we deal with takes strong action against any employee who is ticketed for a traffic violation during work hours. They also review a prospective employee's driving record before hiring that person, thereby screening out any undesirable employee with a poor driving record.

In conclusion, it should be your commercial driving record that determines your insurability while at work and not your personal driving record.

We urge you to please support HB 349. Thank You!

John A. Manzer

Statement to House Business and Economic Development Committee
HB 349- Date submitted: February 8, 1993
Ben Havdahl, Montana Motor Carriers Association

Mr. Chairman. Members of the Committee. For the record I am Ben Havdahl representing the Montana Motor Carriers Association. MMCA has some 439 carrier members and we want to go on record in support of the HB 349.

I am not absolutely certain as to how many of our carrier members have experienced a problem with insurance carriers refusing insurance coverage, canceling a policy or rating a policy up because of a personal driving record of one of their employees. Probably not a great number, however if there are just a few, this legislation would be in their best interest and that of the all carrier employers.

I would point out to the committee that both Federal and State Motor Carrier Safety regulations require a motor carrier to make an annual review of their drivers records to determine where that driver meets the minimum requirements for safe driving or is disqualified to drive a motor vehicle pursuant to the regulations. A number of the disqualifications relate to personal convictions for driving offenses.

A motor carrier meeting these requirements is well aware of any and all the offenses that a given driver might commit. He is required to take appropriate action including disqualifying that driver.

Therefore it would be unreasonable and unfair for any insurance company, so inclined to refuse that carrier insurance or rate his insurance because of a personal conviction by a driver. The carrier is responsible for taking appropriate action and an insurance carrier should be precluded from taking the action addressed in this bill.
Thank you.

section. *Exception.* The period of disqualification is 6 months if the conviction or forfeiture of bond or collateral solely concerned the transportation or possession of substances named in paragraph (c)(2)(iii) of this section.

(ii) *Subsequent offenders.* A driver is disqualified for 3 years after the date of his conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, he was convicted of, or forfeited bond or collateral upon a charge of, an offense that would disqualify him under the rules in this section.

SUBPART C — BACKGROUND AND CHARACTER

§391.21 Application for employment.

(a) Except as provided in Subpart G of this part, a person shall not drive a motor vehicle unless he has completed and furnished the motor carrier that employs him with an application for employment that meets the requirements of paragraph (b) of this section.

(b) The application for employment shall be made on a form furnished by the motor carrier. Each application form must be completed by the applicant, must be signed by him, and must contain the following information:

(1) The name and address of the employing motor carrier;

(2) The applicant's name, address, date of birth, and social security number;

(3) The addresses at which the applicant has resided during the 3 years preceding the date on which the application is submitted;

(4) The date on which the application is submitted;

(5) The issuing State, number, and expiration date of each unexpired motor vehicle operator's license or permit that has been issued to the applicant;

(6) The nature and extent of the applicant's experience in the operation of motor vehicles, including the type of equipment (such as buses, trucks, truck tractors, semitrailers, full trailers, and pole trailers) which he has operated;

(7) A list of all motor vehicle accidents in which the applicant was involved during the 3 years preceding the date the application is submitted, specifying the date and nature of each accident and any fatalities or personal injuries it caused;

(8) A list of all violations of motor vehicle laws or ordinances (other than violations involving only parking) of which the applicant was convicted or forfeited bond or collateral during the 3 years preceding the date the application is submitted;

(9) A statement setting forth in detail the facts and circumstances of any denial, revocation, or suspension of any license, permit, or privilege to operate a motor vehicle that has been issued to the applicant, or a statement that no such denial, revocation, or suspension has occurred;

(10) A list of the names and addresses of the applicant's employers during the 3 years preceding the date the application is submitted, together with the dates he was employed by, and his reason for leaving the employ of, each employer;

(11) For those drivers applying to operate a commercial motor vehicle as defined by Part 383 of this subchapter, a list of the names and addresses of the applicant's employers during the 7-year

period preceding the 3 years contained in paragraph (b)(10) of this section for which the applicant was an operator of a commercial motor vehicle, together with the dates of employment and the reasons for leaving such employment;

(12) The following certification and signature line, which must appear at the end of the application form and be signed by the applicant:

This certifies that this application was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge.

(Date)

(Applicant's Signature)

(c) A motor carrier may require an applicant to provide information in addition to the information required by paragraph (b) of this section on the application form.

(d) Before an application is submitted, the motor carrier shall inform the applicant that the information he provides in accordance with paragraph (b)(10) of this section may be used, and the applicant's prior employers may be contacted, for the purpose of investigating the applicant's background as required by §391.23.

§391.23 Investigation and inquiries.

(a) Except as provided in Subpart G of this part, each motor carrier shall make the following investigations and inquiries with respect to each driver it employs, other than a person who has been a regularly employed driver of the motor carrier for a continuous period which began before January 1, 1971:

(1) An inquiry into the driver's driving record during the preceding 3 years to the appropriate agency of every State in which the driver held a motor vehicle operator's license or permit during those 3 years; and

(2) An investigation of the driver's employment record during the preceding 3 years.

(b) The inquiry to State agencies required by paragraph (a)(1) of this section must be made within 30 days of the date the driver's employment begins and shall be made in the form and manner those agencies prescribe. A copy of the response by each State agency, showing the driver's driving record or certifying that no driving record exists for that driver, shall be retained in the carrier's files as part of the driver's qualification file.

(c) The investigation of the driver's employment record required by paragraph (a)(2) of this section must be made within 30 days of the date his employment begins. The investigation may consist of personal interviews, telephone interviews, letters, or any other method of obtaining information that the carrier deems appropriate. Each motor carrier must make a written record with respect to each past employer who was contacted. The record must include the past employer's name and address, the date he was contacted, and his comments with respect to the driver. The record shall be retained in the motor carrier's files as part of the driver's qualification file.

§391.25 Annual review of driving record.

Except as provided in Subpart G, of this part, each motor carrier shall, at least once every 12 months, review the driving record of each driver it employs to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive a motor vehicle pursuant to

(3) Operates wholly within the exempt intracity zone (as defined in §390.5);

(4) Does not operate a vehicle used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801-1813); and

(5)(i) Was not 21 years of age on July 1, 1988; or
(ii) Has a medical or physical condition which:

(A) Would prevent such person from operating a commercial motor vehicle under the Federal Motor Carrier Safety Regulations contained in this subchapter;

(B) Existed on July 1, 1988, or at the time of the first required physical examination after that date; and

(C) The examining physician has determined has not substantially worsened since July 1, 1988, or the time of the first required physical examination after that date.

§391.3-§391.7 [Reserved]

SUBPART B — QUALIFICATION AND DISQUALIFICATION OF DRIVERS

§391.11 Qualifications of drivers.

(a) A person shall not drive a motor vehicle unless he is qualified to drive a motor vehicle. Except as provided in §391.63, a motor carrier shall not require or permit a person to drive a motor vehicle unless that person is qualified to drive a motor vehicle.

(b) Except as provided in subpart G of this part, a person is qualified to drive a motor vehicle if he—

(1) Is at least 21 years old;

(2) Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;

(3) Can, by reason of experience, training, or both, safely operate the type of motor vehicle he drives;

(4) Can, by reason of experience, training, or both, determine whether the cargo he transports (including baggage in a passenger-carrying motor vehicle) has been properly located, distributed, and secured in or on the motor vehicle he drives;

(5) Is familiar with methods and procedures for securing cargo in or on the motor vehicle he drives;

(6) Is physically qualified to drive a motor vehicle in accordance with Subpart E - Physical Qualifications and Examinations of Part 391;

(7) Has a currently valid commercial motor vehicle operator's license issued only from one State or jurisdiction, except whenever a State law enacted on or before June 1, 1986, requires such person to have more than one driver's license. This exception shall not be effective after December 31, 1989.

(8) Has prepared and furnished the motor carrier that employs him with the list of violations or the certificate as required by §391.27;

(9) Is not disqualified to drive a motor vehicle under the rules in §391.15;

(10) Has successfully completed a driver's road test and has been issued a certificate of driver's road test in accordance with §391.31, or has presented an operator's license or a certificate of road test which the motor carrier that employs him has accepted as equivalent to a road test in accordance with §391.33;

(11) Has taken a written examination and has been issued a certificate of written examination in accordance with §391.35, or has presented a certificate of written examination which the motor carrier that employs him has accepted as equivalent to a written examination in accordance with §391.37; and

(12) Has completed and furnished the motor carrier that employs him with an application for employment in accordance with §391.21.

§391.15 Disqualification of drivers.

(a) *General.* A driver who is disqualified shall not drive a commercial motor vehicle. A motor carrier shall not require or permit a driver who is disqualified to drive a commercial motor vehicle.

(b) *Disqualification for loss of driving privileges.* A driver is disqualified for the duration of his loss of his privilege to operate a commercial motor vehicle on public highways, either temporarily or permanently, by reason of the revocation, suspension, withdrawal, or denial of an operator's license, permit, or privilege, until that operator's license, permit, or privilege is restored by the authority that revoked, suspended, withdrew, or denied it.

(c) *Disqualification for criminal and other offenses.*

(1) *General rule.* A driver who is convicted of (or forfeits bond or collateral upon a charge of) a disqualifying offense specified in paragraph (c)(2) of this section is disqualified for the period of time specified in paragraph (c)(3) of this section if—

(i) The offense was committed during on-duty time as defined in §395.2(a) of this subchapter or as otherwise specified; and

(ii) The driver is employed by a motor carrier or is engaged in activities that are in furtherance of a commercial enterprise in interstate, intrastate, or foreign commerce;

(2) *Disqualifying offenses.* The following offenses are disqualifying offenses:

(i) Driving a commercial motor vehicle while under the influence of alcohol. This shall include:

(A) Driving a commercial motor vehicle while the person's alcohol concentration is 0.04 percent or more;

(B) Driving under the influence of alcohol, as prescribed by State law; or

(C) Refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of §391.15(c)(2)(i) (A) or (B), or §392.5(a)(2).

(ii) Driving a motor vehicle under the influence of a Schedule I drug or other substance identified in Appendix D to this subchapter,* an amphetamine, a narcotic drug, a formulation of an amphetamine or a derivative of a narcotic drug;

(iii) Transportation, possession, or unlawful use of a Schedule I drug or other substance identified in Appendix D of this subchapter,* amphetamines, narcotic drugs, formulations of an amphetamine, or derivatives of narcotic drugs while on on-duty time;

(iv) Leaving the scene of an accident while operating a commercial motor vehicle; or

(v) A felony involving the use of a motor vehicle.

(3) *Duration of disqualification.* — (i) *First offenders.* A driver is disqualified for 1 year after the date of conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, the driver was not convicted of, or did not forfeit bond or collateral upon a charge of an offense that would disqualify the driver under the rules of this

section. *Exception.* The period of disqualification is 6 months if the conviction or forfeiture of bond or collateral solely concerned the transportation or possession of substances named in paragraph (c)(2)(iii) of this section.

(ii) *Subsequent offenders.* A driver is disqualified for 3 years after the date of his conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, he was convicted of, or forfeited bond or collateral upon a charge of, an offense that would disqualify him under the rules in this section.

SUBPART C — BACKGROUND AND CHARACTER

§391.21 Application for employment.

(a) Except as provided in Subpart G of this part, a person shall not drive a motor vehicle unless he has completed and furnished the motor carrier that employs him with an application for employment that meets the requirements of paragraph (b) of this section.

(b) The application for employment shall be made on a form furnished by the motor carrier. Each application form must be completed by the applicant, must be signed by him, and must contain the following information:

(1) The name and address of the employing motor carrier;

(2) The applicant's name, address, date of birth, and social security number;

(3) The addresses at which the applicant has resided during the 3 years preceding the date on which the application is submitted;

(4) The date on which the application is submitted;

(5) The issuing State, number, and expiration date of each unexpired motor vehicle operator's license or permit that has been issued to the applicant;

(6) The nature and extent of the applicant's experience in the operation of motor vehicles, including the type of equipment (such as buses, trucks, truck tractors, semitrailers, full trailers, and pole trailers) which he has operated;

(7) A list of all motor vehicle accidents in which the applicant was involved during the 3 years preceding the date the application is submitted, specifying the date and nature of each accident and any fatalities or personal injuries it caused;

(8) A list of all violations of motor vehicle laws or ordinances (other than violations involving only parking) of which the applicant was convicted or forfeited bond or collateral during the 3 years preceding the date the application is submitted;

(9) A statement setting forth in detail the facts and circumstances of any denial, revocation, or suspension of any license, permit, or privilege to operate a motor vehicle that has been issued to the applicant, or a statement that no such denial, revocation, or suspension has occurred;

(10) A list of the names and addresses of the applicant's employers during the 3 years preceding the date the application is submitted, together with the dates he was employed by, and his reason for leaving the employ of, each employer;

(11) For those drivers applying to operate a commercial motor vehicle as defined by Part 383 of this subchapter, a list of the names and addresses of the applicant's employers during the 7-year

period preceding the 3 years contained in paragraph (b)(10) of this section for which the applicant was an operator of a commercial motor vehicle, together with the dates of employment and the reasons for leaving such employment;

(12) The following certification and signature line, which must appear at the end of the application form and be signed by the applicant:

This certifies that this application was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge.

(Date)

(Applicant's Signature)

(c) A motor carrier may require an applicant to provide information in addition to the information required by paragraph (b) of this section on the application form.

(d) Before an application is submitted, the motor carrier shall inform the applicant that the information he provides in accordance with paragraph (b)(10) of this section may be used, and the applicant's prior employers may be contacted, for the purpose of investigating the applicant's background as required by §391.23.

§391.23 Investigation and inquiries.

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(1) An inquiry into the driver's driving record during the preceding 3 years to the appropriate agency of every State in which the driver held a motor vehicle operator's license or permit during those 3 years; and

(2) An investigation of the driver's employment record during the preceding 3 years.

(b) The inquiry to State agencies required by paragraph (a)(1) of this section must be made within 30 days of the date the driver's employment begins and shall be made in the form and manner those agencies prescribe. A copy of the response by each State agency, showing the driver's driving record or certifying that no driving record exists for that driver, shall be retained in the carrier's files as part of the driver's qualification file.

(c) The investigation of the driver's employment record required by paragraph (a)(2) of this section must be made within 30 days of the date his employment begins. The investigation may consist of personal interviews, telephone interviews, letters, or any other method of obtaining information that the carrier deems appropriate. Each motor carrier must make a written record with respect to each past employer who was contacted. The record must include the past employer's name and address, the date he was contacted, and his comments with respect to the driver. The record shall be retained in the motor carrier's files as part of the driver's qualification file.

§391.25 Annual review of driving record.

Except as provided in Subpart G, of this part, each motor carrier shall, at least once every 12 months, review the driving record of each driver it employs to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive a motor vehicle pursuant to

Amendments to House Bill No. 222
First Reading Copy

For the Committee on Business and Economic Development

Prepared by Paul Verdon
February 7, 1993

1. Page 2, line 7.

Following: "Each"

Insert: "individual, except an apprentice, employed by the
licensee to perform services under the"

2. Page 2, line 8.

Strike: "have separate department endorsements for"

Insert: "must obtain from the department an endorsement to
service"

3. Page 2, line 9.

Following: "extinguishers"

Strike: "1"

Insert: "or to sell, service, or install:

(a) "

Following: "systems"

Strike: ", "

Insert: ";

(b) "

4. Page 2, line 10.

Following: "suppression systems"

Strike: ", and"

Insert: "; or"

(c)

5. Page 2, line 13.

Strike: "supervising"

Insert: "conducting"

6. Page 2, line 19.

Strike: "a"

Insert: "the required"

7. Page 3, line 7.

Following: "i;"

Insert: "and"

8. Page 3, lines 9 through 12.

Following: "who" on line 9

Strike: remainder of line 9 through "(c)" on line 12

9. Page 3, line 21.

Following: "fee-" on line 20

Insert: "(3) The department shall:

(a) issue an endorsement to an applicant who scores a

passing grade on an examination devised or approved by the department; and

(b) annually renew the endorsement on payment of the endorsement fee and submission of satisfactory proof that the endorsee has completed continuing education, training, or testing required by the department."

10. Page 4, line 15.

Following: "license fee"

Insert: ":"

(2)

Strike: "\$250"

11. Page 4, line 16.

Following: "50-39-101"

Strike: "._"

Insert: ":"

(a) \$100 to service fire extinguishers;

(b) \$175 to sell, service, or install fire alarm systems;

(c) \$175 to sell, service, or install special agent fire suppression systems; and

(d) \$175 to sell, service, or install fire extinguishing systems.

(3)"

12. Page 4, lines 20 through 22.

Strike: lines 20 through 22 in their entirety

13. Page 5, line 1.

Following: page 4

Insert: "NEW SECTION. **Section 7. Deposit of fees.** The fees collected under [section 5] must be deposited in an account in the state special revenue fund to the credit of the department of justice and appropriated to the department to administer [this act].

NEW SECTION. **Section 8. Coordination instruction.** If House Bill No. 207 is passed and approved, and if it creates a state special revenue account to fund the fire prevention and investigation activities of the department of justice, then [section 7 of this act] is void, and the fees collected under [section 5 of this act] must be deposited in the special revenue account created by House Bill No. 207."

Renumber: subsequent sections

14. Page 5, line 2.

Strike: "[Section 6] is"

Insert: "[Sections 6 and 7] are"

15. Page 5, line 4.

Following: "6"

Insert: "and 7"

EXHIBIT 4
DATE 2-8-93
HB 349

HOUSE OF REPRESENTATIVES

Business and Economic COMMITTEE

ROLL CALL VOTE

DATE 2-8-93 BILL NO. HB 349 NUMBER _____

MOTION: Bachini made Substitute
Motion HB 349 Do PASS

Motion Carried 11-7

NAME	AYE	NO
Representative Bob Bachini	✓	
Representative Joe Barnett	✓	
Representative Ray Brandewie		✓
Representative Vicki Cocchiarella	✓	
Representative Fritz Daily	✓	
Representative Tim Dowell	✓	
Representative Alvin Ellis		✓
Representative Stella Jean Hansen	✓	
Representative Jack Herron		✓
Representative Dick Knox		✓
Representative Don Larsen	✓	
Representative Norm Mills		✓
Representative Doug Wagner	✓	
Representative Bruce Simon	✓	
Representative Carley Tuss	✓	
Representative Bob Pavlovich	✓	
Representative Sonny Hansen		✓
Chairman Steve Benedict		✓
	11	7

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Business & Economics COMMITTEE

BILL NO. HB 349

DATE 2-8-93 SPONSOR(S) Rep. W. Ryan

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Don Judge	MT STATE AFL-CIO	✓	
Don WATERMAN	FARMERS INSURANCE COMPANIES		✓
Ben Hovdahl	MT Motor Carriers Assoc	✓	
John Manzer	Teamsters Union	✓	
Chuck Cashell	IUCIE #400	✓	
Stan Dupree	IBEW L.V. 44	✓	
GARY TAYLOR	MACHINISTS UNION	✓	
Jacqueline J. Benmark	Am. Ins. Assoc.		✓
Marie Eggen	IBEW State Conf.	✓	
Greg Van Horne	State Farm Ins.		✓
Dave Drynan	Insurance Commissioner	✓	
Eng. Fendler	Laborer Union	✓	
Gene Phillips Jr.	NAH		✓
Roger McGlen	IIAM		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.