

SENATE BILL NO. 355
INTRODUCED BY FARRELL
BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE SENATE

FEBRUARY 6, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON HIGHWAYS & TRANSPORTATION.
	FIRST READING.
FEBRUARY 15, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 16, 1989	PRINTING REPORT.
FEBRUARY 17, 1989	SECOND READING, DO PASS.
FEBRUARY 18, 1989	ENGROSSING REPORT.
FEBRUARY 20, 1989	THIRD READING, PASSED. AYES, 49; NOES, 1.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON HIGHWAYS & TRANSPORTATION.
	FIRST READING.
MARCH 15, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 18, 1989	SECOND READING, CONCURRED IN.
MARCH 20, 1989	THIRD READING, CONCURRED IN. AYES, 96; NOES, 1.
	RETURNED TO SENATE.

MARCH 21, 1989

IN THE SENATE

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Smith BILL NO. 355
2 INTRODUCED BY Furnell
3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GOVERNING THE ISSUANCE
6 AND USE OF COMMERCIAL VEHICLE OPERATOR'S ENDORSEMENTS AND
7 BRINGING MONTANA STATUTES INTO COMPLIANCE WITH FEDERAL
8 REGULATIONS; PROVIDING FOR SUSPENSION OF COMMERCIAL MOTOR
9 VEHICLE OPERATOR'S ENDORSEMENTS; PROVIDING FOR CERTAIN
10 CHEMICAL TESTS; PROVIDING FOR APPEAL; REMOVING A METHOD TO
11 OBTAIN A HAZARDOUS MATERIAL ENDORSEMENT; AND AMENDING
12 SECTIONS 61-1-134, 61-5-103, 61-5-111, 61-5-204, 61-5-208,
13 AND 61-8-405, MCA."
14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
16 NEW SECTION. Section 1. Purpose. (1) The purpose of
17 [this act] is to reduce the number of commercial motor
18 vehicle accidents in Montana, to provide greater safety to
19 the motoring public and others by establishing stringent
20 criteria governing the operation of commercial motor
21 vehicles, and to deny the privilege of operating commercial
22 motor vehicles upon the public streets and highways to those
23 commercial motor vehicle operators who are determined to be
24 not qualified.
25 (2) To fulfill this purpose, the legislature intends

1 that [sections 1 through 8]:
2 (a) establish criteria and procedures for the
3 operation of commercial motor vehicles that require safety
4 practices commensurate with the danger inherent to their
5 operation;
6 (b) provide for increased administrative punishment
7 for commercial motor vehicle operators who use alcohol while
8 operating commercial motor vehicles;
9 (c) provide greater control of commercial motor
10 vehicle operators using the streets and highways; and
11 (d) conform Montana's laws on commercial motor vehicle
12 operator's endorsements with federal regulations based on
13 Public Law 99-570, "Commercial Motor Vehicle Safety Act of
14 1986".
15 NEW SECTION. Section 2. Suspension of commercial
16 vehicle operator's endorsement -- disqualification. (1)
17 The department shall suspend the commercial vehicle
18 operator's endorsement of any commercial operator if the
19 department's records or information received from federal
20 authorities shows that the person is disqualified under
21 federal law.
22 (2) A commercial vehicle operator's endorsement
23 suspended pursuant to this section remains suspended for the
24 duration of the period of disqualification under federal
25 regulations.

1 (3) A person whose commercial vehicle operator's
2 endorsement is suspended under this section due to
3 disqualification:

4 (a) may appeal the suspension as provided in 61-5-211;
5 and

6 (b) may not operate a commercial vehicle until the
7 suspension is lifted and his commercial vehicle operator's
8 endorsement is restored.

9 NEW SECTION. Section 3. Suspension of commercial
10 vehicle operator's endorsement -- serious traffic
11 violations. If a commercial motor vehicle operator's
12 record shows that he has been convicted of an offense that
13 subjects him to an accumulation of points under 61-11-203 or
14 as provided by federal regulations, the department shall
15 suspend the commercial vehicle operator's endorsement:

16 (1) for 60 days if the operator was convicted of two
17 hazardous moving violations within 3 years; or

18 (2) for 120 days if the operator was convicted of
19 three hazardous moving violations within 3 years.

20 NEW SECTION. Section 4. Suspension of commercial
21 vehicle operator's endorsement -- felony involving a
22 controlled substance while driving a commercial vehicle.
23 If the department receives information that a commercial
24 motor vehicle operator has been convicted of using a
25 commercial motor vehicle in the commission of a felony

1 involving the manufacture, distribution, or dispensing of a
2 controlled substance, as defined by federal regulations, or
3 a felony involving possession with intent to manufacture,
4 distribute, or dispense a controlled substance, the
5 department shall suspend his commercial vehicle operator's
6 endorsement for life.

7 NEW SECTION. Section 5. Suspension for operating a
8 commercial vehicle with a blood alcohol concentration of
9 0.04 or more -- hearing. (1) A person whose blood alcohol
10 concentration is 0.04 or more while he drives or is in
11 actual physical control of a commercial motor vehicle is
12 subject to the suspension of his commercial vehicle
13 operator's endorsement. If the department receives a sworn
14 report from a peace officer that the person was operating a
15 commercial motor vehicle while his blood alcohol
16 concentration was 0.04 or more, the department shall suspend
17 the driver's commercial vehicle operator's endorsement:

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

23 (b) for 10 years, with no provision for a restricted
24 probationary license or endorsement, upon receipt of a
25 second or subsequent report at any time as determined from

1 the records of the department.

2 (2) A peace officer who determines that a commercial
3 motor vehicle operator's blood alcohol concentration is 0.04
4 or more shall place the commercial motor vehicle operator
5 out of service as mandated by federal regulations for 24
6 hours.

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

11 (4) The department shall immediately notify in writing
12 any person whose commercial vehicle operator's endorsement
13 is suspended under this section. The person suspended has
14 the right to file a petition within 30 days after the notice
15 is given for a hearing in the matter in the district court
16 in the county in which the finding of blood alcohol
17 concentration was made. The court has jurisdiction and
18 shall set the matter for hearing upon 10 days' written
19 notice to the county attorney of the county in which the
20 appeal is filed. The county attorney shall represent the
21 state. The court shall take testimony and examine the facts
22 of the case, except that the issue is limited to whether the
23 person was driving or had actual physical control of a
24 commercial motor vehicle while his blood alcohol
25 concentration was 0.04 or more. The court shall determine

1 whether the petitioner is entitled to a commercial vehicle
2 operator's endorsement or is subject to suspension as
3 provided in this section. The provisions of 61-8-404 apply
4 to any proceedings under this section.

5 NEW SECTION. **Section 6. Chemical blood, breath, or**
6 **urine tests of commercial vehicle operators -- procedure --**
7 **suspension.** (1) A person who operates a commercial motor
8 vehicle upon the ways of this state open to the public is
9 considered to have given consent, subject to the provisions
10 of 61-8-401 and [section 5], to a chemical test of his
11 blood, breath, or urine for the purpose of determining the
12 alcohol content of his blood if he is requested to submit to
13 the test by a peace officer having reasonable grounds to
14 believe the person to have been driving or in actual
15 physical control of a commercial motor vehicle upon the ways
16 of this state open to the public while his blood alcohol
17 concentration was 0.04 or more. The peace officer may
18 designate a blood, breath, or urine test to be administered.

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

22 (3) If a commercial motor vehicle operator who is a
23 resident of Montana refuses upon the request of a peace
24 officer to submit to a chemical test designated by the
25 officer as provided in subsection (1), the test may not be

1 given. On behalf of the department, the officer shall
 2 immediately seize the person's driver's license showing the
 3 commercial vehicle operator's endorsement and forward the
 4 license to the department, along with a sworn report that he
 5 had reasonable grounds to believe the person had been
 6 driving or was in actual physical control of a commercial
 7 motor vehicle upon ways of this state open to the public
 8 while having a blood alcohol concentration of 0.04 or more
 9 and that the person had refused to submit to the test upon
 10 the request of the officer. Upon receipt of the report, the
 11 department shall suspend the license for a period provided
 12 in subsection (5).

13 (4) Upon seizure of a resident's driver's license
 14 showing a commercial vehicle operator's endorsement, the
 15 peace officer shall issue, on behalf of the department, a
 16 temporary driving permit without the commercial vehicle
 17 operator's endorsement. The temporary driving permit is
 18 valid for 72 hours after issuance.

19 (5) If a commercial motor vehicle operator refuses to
 20 submit to a chemical test as provided in subsection (3), the
 21 department shall suspend his commercial vehicle operator's
 22 endorsement:

23 (a) upon first refusal, for 1 year, with no provision
 24 for a restricted probationary license or endorsement, except
 25 that if the offense occurred in a commercial motor vehicle

1 transporting hazardous materials, the suspension for a first
 2 refusal must be for 3 years;

3 (b) upon a second or subsequent refusal at any time as
 4 determined from the records of the department, for 10 years,
 5 with no provision for a restricted probationary license or
 6 endorsement.

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

12 **NEW SECTION. Section 7. Right of appeal of court.**

13 The department shall immediately notify in writing any
 14 person whose commercial vehicle operator's endorsement has
 15 been suspended under the provisions of [section 6], and the
 16 person may, within 30 days after receipt of notification,
 17 file a petition for a hearing on the matter in the district
 18 court in the county where the person resides or in the
 19 district court in the county where the finding of refusal
 20 was made. The court has jurisdiction and shall set the
 21 matter for hearing upon 10 days' written notice to the
 22 county attorney of the county where the appeal is filed.
 23 The county attorney shall represent the state. The court
 24 shall take testimony and examine the facts of the case,
 25 except that the issue is limited to whether a peace officer

had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while the person had a blood alcohol concentration of 0.04 or more, whether the person was ordered to submit to a test, and whether the person refused to submit to the test. The court shall determine whether the petitioner is entitled to a commercial vehicle operator's endorsement or is subject to suspension as provided in [sections 1 through 8].

NEW SECTION. Section 8. Administration of tests.

Tests required under [sections 1 through 8] must be administered as provided in 61-8-405.

Section 9. Section 61-5-103, MCA, is amended to read:

"61-5-103. Residency requirement. (1) Any person who has resided in ~~this--state~~ Montana for ~~a-period-exceeding~~ more than 90 days is considered to be a resident for the purpose of being licensed to operate a motor vehicle and must thereafter be licensed under the laws of ~~this--state~~ Montana before operating a motor vehicle.

(2) A person who operates a commercial motor vehicle in Montana is considered to be a resident of Montana for the purpose of being licensed to operate a commercial motor vehicle if he has resided in Montana for more than 30 days and must thereafter be licensed under the laws of Montana before operating any commercial motor vehicle."

Section 10. Section 61-5-111, MCA, is amended to read:

"61-5-111. Renewals, expirations, and fees for licenses, permits, and endorsements. (1) The department ~~shall--have~~ has authority to appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing ~~such~~ sales. In those areas where the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may not appoint an agent. The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to every qualifying applicant ~~qualifying therefor-a-driver's-license--as--applied--for~~. The license shall contain a full-face photograph of the licensee in the size and form ~~as~~ prescribed by the department, except as provided in subsection (4); a distinguishing number issued to the licensee; the full name, date of birth, residence address, and a brief description of the licensee; and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink immediately upon receipt of the license. ~~No A license shall be is not~~ valid until it ~~has--been-so~~ is signed by the licensee.

(2) (a) The department shall, when any person applies for renewal of a driver's license, test the applicant's

1 eyesight and may also in the department's discretion have
2 the applicant demonstrate his physical ability to operate
3 and to exercise ordinary and reasonable care in the
4 operation of a motor vehicle.

5 (b) In the case of commercial vehicle operator's
6 endorsements, the department may also require that the
7 applicant successfully complete a written examination as
8 required by federal regulations.

9 (c) A person shall-be is considered to have applied
10 for renewal of a Montana driver's license if the application
11 is made within 3 months of the expiration of his license.

12 (3) Licenses--shall--expire A license expires on the
13 anniversary of the date of birth of the licensee 4 years or
14 less after the date of issue.

15 (4) A license issued to a person under the age of 21
16 years must contain a photograph of the licensee's profile.

17 (5) Whenever the department issues an original license
18 to a person under the age of 18 years, the license shall be
19 designated and clearly marked as a "provisional license".
20 Any license ~~so~~ designated and marked as provisional may be
21 suspended by the department for a period of not more than 12
22 months, when its records disclose that the licensee,
23 subsequent to the issuance of such license, has been guilty
24 of careless or negligent driving. Upon renewal the
25 department may, for any reasonable cause as shown by its

1 records, designate the renewal of the license as
2 provisional; otherwise, a license in usual form ~~shall~~ must
3 be issued subject to other provisions of the laws of
4 Montana.

5 (6) It ~~shall-be~~ is unlawful for any person to have in
6 his possession or under his control more than one Montana
7 driver's license at any one time. A license is not valid for
8 the operation of a motorcycle or quadricycle until the
9 holder thereof has completed the requirements of 61-5-110
10 and the license has been clearly marked with the words
11 "motorcycle endorsement". A license is not valid for the
12 operation of a commercial vehicle until the holder thereof
13 has completed the requirements of 61-5-110 and the license
14 has been clearly marked with the words "commercial vehicle
15 operator's endorsement".

16 (7) Fees for driver's licenses ~~shall--be--as--follows~~
17 are:

18 (a) driver's license -- \$3 per year or fraction
19 thereof;

20 (b) motorcycle endorsement -- 50 cents per year or
21 fraction thereof;

22 (c) commercial vehicle operator's endorsement:

23 (i) interstate -- \$3 per year or fraction thereof;

24 (ii) intrastate -- \$1.50 per year or fraction thereof.

25 (8) A license designated as a chauffeur's license as

1 of January 1, 1988, is valid as a commercial vehicle
2 operator's endorsement until the expiration of the license.

3 (9) ~~On--or-after-January-17-1988, if the~~ The holder of
4 a chauffeur's license ~~wishes to~~ may convert his chauffeur's
5 license to a commercial vehicle operator's endorsement, ~~he~~
6 ~~may do--so~~ by paying the appropriate fee covering the
7 remainder of the life of his license and complying with the
8 requirements established by the department.

9 (10) ~~After-January-17-1988, the~~ The holder of a valid
10 chauffeur's license who is renewing and wishes to obtain a
11 commercial vehicle operator's endorsement may do so upon
12 paying the appropriate fees and complying with the
13 requirements established by the department.

14 ~~{11}-After-January-17-1988,--the--holder--of--a--valid~~
15 ~~operator's,--chauffeur's,--or--driver's--license--may--obtain--a~~
16 ~~hazardous-material-endorsement-by-successfully-completing--a~~
17 ~~written-examination."~~

18 **Section 11.** Section 61-1-134, MCA, is amended to read:

19 "61-1-134. Commercial motor vehicle defined --
20 exceptions. (1) "Commercial motor vehicle" means a motor
21 vehicle used to transport passengers or property if the
22 vehicle:

23 (a) has a gross vehicle weight of 26,001 pounds or
24 more;

25 (b) is designed to transport more than 15 passengers,

1 including the driver; or

2 (c) is used to transport hazardous material.

3 (2) Vehicles operated within the state of Montana
4 which that are registered as paying the 16¢ gross weight fee
5 under 61-10-206 are not commercial motor vehicles under this
6 section.

7 (3) Vehicles that are operated within the state of
8 Montana by farmers or persons employed by farmers who are
9 transporting farm products or farm supplies and that are
10 operated within 150 miles of the farm headquarters are not
11 considered commercial motor vehicles under this section."

12 **Section 12.** Section 61-5-204, MCA, is amended to read:

13 "61-5-204. Suspending resident's license upon
14 conviction in another state. The department is authorized to
15 suspend or revoke the driver's license and commercial
16 vehicle operator's endorsement or just the commercial
17 vehicle operator's endorsement of any resident of this state
18 or the privilege of a nonresident to drive a motor vehicle
19 in this state upon receiving notice of the conviction of
20 such the person in another state jurisdiction of an offense
21 therein in that jurisdiction which, if committed in this
22 state, would be grounds for the suspension or revocation of
23 the driver's license or commercial vehicle operator's
24 endorsement."

25 **Section 13.** Section 61-5-208, MCA, is amended to read:

1 **"61-5-208. Period of suspension or revocation.** (1) The
 2 department may not suspend or revoke a driver's license,
 3 commercial vehicle operator's endorsement, or privilege to
 4 drive a motor vehicle on the public highways for a period of
 5 more than 1 year, except as permitted under 61-5-207,
 6 61-5-212, 61-6-123, and 61-11-211, and sections 3 through
 7 5.

8 (2) Any A person whose license, commercial vehicle
 9 operator's endorsement, or privilege to drive a motor
 10 vehicle on the public highways has been suspended or revoked
 11 is not entitled to have such the license, endorsement, or
 12 privilege renewed or restored unless the revocation was for
 13 a cause which has been removed, except that after the
 14 expiration of the period of such the revocation or
 15 suspension, the person may make application for a new
 16 license or endorsement as provided by law but the department
 17 may not then issue a new license or endorsement unless and
 18 until it is satisfied, after investigation of the driving
 19 ability of the person and upon a showing by its records or
 20 other sufficient evidence, that the person is eligible to be
 21 licensed to drive in this-state Montana. When any person is
 22 convicted or forfeits bail or collateral not vacated for the
 23 offense of operating or being in actual physical control of
 24 a motor vehicle while under the influence of alcohol or any
 25 drug or a combination thereof or for the offense of

1 operation of a motor vehicle by a person with alcohol
 2 concentration of 0.10 or more, the department shall, upon
 3 receiving a report of such conviction or forfeiture of bail
 4 or collateral not vacated, suspend the license, including
 5 any commercial vehicle operator's endorsement, or driving
 6 privilege of the person for a period of 6 months. Upon
 7 receiving a report of a conviction or forfeiture of bail or
 8 collateral for a second, third, or subsequent offense within
 9 5 years of the first offense, the department shall revoke
 10 the license, including any commercial vehicle operator's
 11 endorsement, or driving privilege of the person for a period
 12 of 1 year.

13 (3) The period for all revocations made mandatory by
 14 61-5-205 ~~shall be~~ is 1 year except as provided in subsection
 15 (2) ~~of this section~~.

16 (4) The period of revocation for any person convicted
 17 of any offense which makes mandatory the revocation of the
 18 driver's license commences from date of conviction or
 19 forfeiture of bail."

20 **Section 14.** Section 61-8-405, MCA, is amended to read:

21 **"61-8-405. Administration of tests.** (1) Only a
 22 physician or registered nurse or other qualified person
 23 under the supervision and direction of a physician or
 24 registered nurse acting at the request of a peace officer
 25 may withdraw blood for the purpose of determining the

1 alcoholic content therein. This limitation ~~shall~~ does not
2 apply to the taking of breath or urine specimens.

3 (2) The person tested may, at his own expense, have a
4 physician or registered nurse of his own choosing administer
5 a test, in addition to any administered at the direction of
6 a peace officer, for the purpose of determining the amount
7 of alcohol in his blood at the time alleged as shown by
8 chemical analysis of his blood, breath, or urine. The
9 failure or inability to obtain an additional test by a
10 person ~~shall~~ does not preclude the admissibility in evidence
11 of the test taken at the direction of a peace officer.

12 (3) Upon the request of the person tested, full
13 information concerning the test taken at the direction of
14 the peace officer ~~shall~~ must be made available to him or his
15 attorney.

16 (4) No physician or registered nurse or other
17 qualified person under the supervision and direction of a
18 physician or registered nurse shall incur any civil or
19 criminal liability as a result of the proper administering
20 of a blood test when requested in writing by a peace officer
21 to administer such a test.

22 (5) If the test given under 61-8-402 or [section 6] is
23 a chemical test of urine, the person tested ~~shall~~ must be
24 given such privacy in the taking of the urine specimen as
25 will insure the accuracy of the specimen and, at the same

1 time, maintain the dignity of the individual involved.

2 (6) The department of justice in cooperation with any
3 appropriate agency shall adopt uniform rules for the giving
4 of blood alcohol tests and may require certification of
5 training to administer ~~such~~ the tests as ~~deemed~~ considered
6 necessary."

7 NEW SECTION. Section 15. Extension of authority. Any
8 existing authority to make rules on the subject of the
9 provisions of [this act] is extended to the provisions of
10 [this act].

11 NEW SECTION. Section 16. Codification instruction.
12 [Sections 1 through 8] are intended to be codified as an
13 integral part of Title 61, chapter 8, and the provisions of
14 Title 61, chapter 8, apply to [sections 1 through 8].

-End-

APPROVED BY COMMITTEE
ON HIGHWAYS & TRANSPORTATION

SENATE BILL NO. 355

INTRODUCED BY FARRELL

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GOVERNING THE ISSUANCE AND USE OF COMMERCIAL VEHICLE OPERATOR'S ENDORSEMENTS AND BRINGING MONTANA STATUTES INTO COMPLIANCE WITH FEDERAL REGULATIONS; PROVIDING FOR SUSPENSION OF COMMERCIAL MOTOR VEHICLE OPERATOR'S ENDORSEMENTS; PROVIDING FOR CERTAIN CHEMICAL TESTS; PROVIDING FOR APPEAL; REMOVING A METHOD TO OBTAIN A HAZARDOUS MATERIAL ENDORSEMENT; AND AMENDING SECTIONS 61-1-134, 61-5-103, 61-5-111, 61-5-204, 61-5-208, AND 61-8-405, MCA."

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

NEW SECTION. Section 1. Purpose. (1) The purpose of [this act] is to reduce the number of commercial motor vehicle accidents in Montana, to provide greater safety to the motoring public and others by establishing stringent criteria governing the operation of commercial motor vehicles, and to deny the privilege of operating commercial motor vehicles upon the public streets and highways to those commercial motor vehicle operators who are determined to be not qualified.

(2) To fulfill this purpose, the legislature intends

that [sections 1 through 8]:

(a) establish criteria and procedures for the operation of commercial motor vehicles that require safety practices commensurate with the danger inherent to their operation;

(b) provide for increased administrative punishment for commercial motor vehicle operators who use alcohol while operating commercial motor vehicles;

(c) provide greater control of commercial motor vehicle operators using the streets and highways; and

(d) conform Montana's laws on commercial motor vehicle operator's endorsements with federal regulations based on Public Law 99-570, "Commercial Motor Vehicle Safety Act of 1986".

NEW SECTION. Section 2. Suspension of commercial vehicle operator's endorsement -- disqualification. (1) The department shall suspend the commercial vehicle operator's endorsement of any commercial operator if the department's records or information received from federal authorities shows that the person is disqualified under federal law.

(2) A commercial vehicle operator's endorsement suspended pursuant to this section remains suspended for the duration of the period of disqualification under federal regulations.

(3) A person whose commercial vehicle operator's

1 endorsement is suspended under this section due to
2 disqualification:

3 (a) may appeal the suspension as provided in 61-5-211;
4 and

5 (b) may not operate a commercial vehicle until the
6 suspension is lifted and his commercial vehicle operator's
7 endorsement is restored.

8 NEW SECTION. Section 3. Suspension of commercial
9 vehicle operator's endorsement -- serious traffic
10 violations. If a commercial motor vehicle operator's record
11 shows that he has been convicted of ~~an offense that subjects~~
12 ~~him to an accumulation of points under 61-11-203 or as~~
13 provided by OF A SERIOUS TRAFFIC VIOLATION AS DEFINED IN
14 federal regulations, the department shall suspend the
15 commercial vehicle operator's endorsement:

16 (1) for 60 days if the operator was convicted of two
17 hazardous moving violations within 3 years; or

18 (2) for 120 days if the operator was convicted of
19 three hazardous moving violations within 3 years.

20 NEW SECTION. Section 4. Suspension of commercial
21 vehicle operator's endorsement -- felony involving a
22 controlled substance while driving a commercial vehicle. If
23 the department receives information that a commercial motor
24 vehicle operator has been convicted of using a commercial
25 motor vehicle in the commission of a felony involving the

1 manufacture, distribution, or dispensing of a controlled
2 substance, as defined by federal regulations, or a felony
3 involving possession with intent to manufacture, distribute,
4 or dispense a controlled substance, the department shall
5 suspend his commercial vehicle operator's endorsement for
6 life.

7 NEW SECTION. Section 5. Suspension for operating a
8 commercial vehicle with a blood alcohol concentration of
9 0.04 or more -- hearing. (1) A person whose blood alcohol
10 concentration is 0.04 or more while he drives or is in
11 actual physical control of a commercial motor vehicle is
12 subject to the suspension of his commercial vehicle
13 operator's endorsement. If the department receives a sworn
14 report from a peace officer that the person was operating a
15 commercial motor vehicle while his blood alcohol
16 concentration was 0.04 or more, the department shall suspend
17 the driver's commercial vehicle operator's endorsement:

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

23 (b) for 10 years, with no provision for a restricted
24 probationary license or endorsement, upon receipt of a
25 second or subsequent report at any time as determined from

1 the records of the department.

2 (2) A peace officer who determines that a commercial
3 motor vehicle operator's blood alcohol concentration is 0.04
4 or more shall place the commercial motor vehicle operator
5 out of service as mandated by federal regulations for 24
6 hours.

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

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12 any person whose commercial vehicle operator's endorsement
13 is suspended under this section. The person suspended has
14 the right to file a petition within 30 days after the notice
15 is given for a hearing in the matter in the district court
16 in the county in which the finding of blood alcohol
17 concentration was made. The court has jurisdiction and
18 shall set the matter for hearing upon 10 days' written
19 notice to the county attorney of the county in which the
20 appeal is filed. The county attorney shall represent the
21 state. The court shall take testimony and examine the facts
22 of the case, except that the issue is limited to whether the
23 person was driving or had actual physical control of a
24 commercial motor vehicle while his blood alcohol
25 concentration was 0.04 or more. The court shall determine

1 whether the petitioner is entitled to a commercial vehicle
2 operator's endorsement or is subject to suspension as
3 provided in this section. The provisions of 61-8-404 apply
4 to any proceedings under this section.

5 NEW SECTION. **Section 6. Chemical blood, breath, or**
6 **urine tests of commercial vehicle operators -- procedure --**
7 **suspension.** (1) A person who operates a commercial motor
8 vehicle upon the ways of this state open to the public is
9 considered to have given consent, subject to the provisions
10 of 61-8-401 and [section 5], to a chemical test of his
11 blood, breath, or urine for the purpose of determining the
12 alcohol content of his blood if he is requested to submit to
13 the test by a peace officer having reasonable grounds to
14 believe the person to have been driving or in actual
15 physical control of a commercial motor vehicle upon the ways
16 of this state open to the public while his blood alcohol
17 concentration was 0.04 or more. The peace officer may
18 designate a blood, breath, or urine test to be administered.

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

22 (3) If a commercial motor vehicle operator who is a
23 resident of Montana refuses upon the request of a peace
24 officer to submit to a chemical test designated by the
25 officer as provided in subsection (1), the test may not be

1 given. On behalf of the department, the officer shall
 2 immediately seize the person's driver's license showing the
 3 commercial vehicle operator's endorsement and forward the
 4 license to the department, along with a sworn report that he
 5 had reasonable grounds to believe the person had been
 6 driving or was in actual physical control of a commercial
 7 motor vehicle upon ways of this state open to the public
 8 while having a blood alcohol concentration of 0.04 or more
 9 and that the person had refused to submit to the test upon
 10 the request of the officer. Upon receipt of the report, the
 11 department shall suspend the license for a period provided
 12 in subsection (5).

13 (4) Upon seizure of a resident's driver's license
 14 showing a commercial vehicle operator's endorsement, the
 15 peace officer shall issue, on behalf of the department, a
 16 temporary driving permit without the commercial vehicle
 17 operator's endorsement. The temporary driving permit is
 18 valid for 72 hours after issuance.

19 (5) If a commercial motor vehicle operator refuses to
 20 submit to a chemical test as provided in subsection (3), the
 21 department shall suspend his commercial vehicle operator's
 22 endorsement:

23 (a) upon first refusal, for 1 year, with no provision
 24 for a restricted probationary license or endorsement, except
 25 that if the offense occurred in a commercial motor vehicle

1 transporting hazardous materials, the suspension for a first
 2 refusal must be for 3 years;

3 (b) upon a second or subsequent refusal at any time as
 4 determined from the records of the department, for 10 years,
 5 with no provision for a restricted probationary license or
 6 endorsement.

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

12 NEW SECTION. **Section 7.** Right of appeal of court. The
 13 department shall immediately notify in writing any person
 14 whose commercial vehicle operator's endorsement has been
 15 suspended under the provisions of [section 6], and the
 16 person may, within 30 days after receipt of notification,
 17 file a petition for a hearing on the matter in the district
 18 court in the county where the person resides or in the
 19 district court in the county where the finding of refusal
 20 was made. The court has jurisdiction and shall set the
 21 matter for hearing upon 10 days' written notice to the
 22 county attorney of the county where the appeal is filed.
 23 The county attorney shall represent the state. The court
 24 shall take testimony and examine the facts of the case,
 25 except that the issue is limited to whether a peace officer

1 had reasonable grounds to believe the person had been
 2 driving or was in actual physical control of a commercial
 3 motor vehicle upon ways of this state open to the public
 4 while the person had a blood alcohol concentration of 0.04
 5 or more, whether the person was ordered to submit to a test,
 6 and whether the person refused to submit to the test. The
 7 court shall determine whether the petitioner is entitled to
 8 a commercial vehicle operator's endorsement or is subject to
 9 suspension as provided in [sections 1 through 8].

10 NEW SECTION. Section 8. Administration of tests. (1)
 11 Tests required under [sections 1 through 8] must be
 12 administered as provided in 61-8-405.

13 (2) THE DEPARTMENT MAY AUTHORIZE A PRIVATE INDIVIDUAL,
 14 INSTITUTION, OR CORPORATION TO ADMINISTER REQUIRED DRIVING
 15 EXAMINATIONS THAT WOULD OTHERWISE BE ADMINISTERED BY THE
 16 DEPARTMENT IF THEY HAVE BEEN OFFICIALLY TRAINED AND
 17 CERTIFIED TO CONDUCT THEM BY THE DEPARTMENT AND THE THIRD
 18 PARTY HAS ENTERED INTO AN AGREEMENT WITH THE DEPARTMENT THAT
 19 COMPLIES WITH THE REQUIREMENTS OF 49 C.F.R. PART 383.75.

20 **Section 9.** Section 61-5-103, MCA, is amended to read:

21 "61-5-103. Residency requirement. (1) Any person who
 22 has resided in ~~this--state~~ Montana for ~~a-period-exceeding~~
 23 more than 90 days is considered to be a resident for the
 24 purpose of being licensed to operate a motor vehicle and
 25 must thereafter be licensed under the laws of ~~this--state~~

1 Montana before operating a motor vehicle.

2 (2) A person who operates a commercial motor vehicle
 3 in Montana is considered to be a resident of Montana for the
 4 purpose of being licensed to operate a commercial motor
 5 vehicle if he has resided in Montana for more than 30 days
 6 and must thereafter be licensed under the laws of Montana
 7 before operating any commercial motor vehicle."

8 **Section 10.** Section 61-5-111, MCA, is amended to read:

9 "61-5-111. Renewals, expirations, and fees for
 10 licenses, permits, and endorsements. (1) The department
 11 ~~shall--have~~ has authority to appoint county treasurers and
 12 other qualified officers to act as its agents for the sale
 13 of driver's licenses receipts and shall make necessary rules
 14 governing ~~such~~ sales. In those areas where the department
 15 provides driver licensing services 3 days or more a week,
 16 the department is responsible for sale of receipts and may
 17 not appoint an agent. The department, upon receipt of
 18 payment of the fees specified in this section, shall issue a
 19 driver's license to every qualifying applicant ~~qualifying~~
 20 ~~therefor-a-driver's-license--as--applied--for~~. The license
 21 shall contain a full-face photograph of the licensee in the
 22 size and form ~~as~~ prescribed by the department, except as
 23 provided in subsection (4); a distinguishing number issued
 24 to the licensee; the full name, date of birth, residence
 25 address, and a brief description of the licensee; and either

1 a facsimile of the signature of the licensee or a space upon
2 which he shall write his signature in pen and ink
3 immediately upon receipt of the license. ~~No A license shall~~
4 ~~be is not~~ valid until it ~~has--been-so~~ is signed by the
5 licensee.

6 (2) (a) The department shall, when any person applies
7 for renewal of a driver's license, test the applicant's
8 eyesight and may also in the department's discretion have
9 the applicant demonstrate his physical ability to operate
10 and to exercise ordinary and reasonable care in the
11 operation of a motor vehicle.

12 (b) In the case of commercial vehicle operator's
13 endorsements, the department may also require that the
14 applicant successfully complete a written examination as
15 required by federal regulations.

16 (c) A person ~~shall-be~~ is considered to have applied
17 for renewal of a Montana driver's license if the application
18 is made within 3 months of the expiration of his license.

19 (3) ~~licenses--shall--expire~~ A license expires on the
20 anniversary of the date of birth of the licensee 4 years or
21 less after the date of issue.

22 (4) A license issued to a person under the age of 21
23 years must contain a photograph of the licensee's profile.

24 (5) Whenever the department issues an original license
25 to a person under the age of 18 years, the license shall be

1 designated and clearly marked as a "provisional license".
2 Any license ~~so~~ designated and marked as provisional may be
3 suspended by the department for a period of not more than 12
4 months, when its records disclose that the licensee,
5 subsequent to the issuance of such license, has been guilty
6 of careless or negligent driving. Upon renewal the
7 department may, for any reasonable cause as shown by its
8 records, designate the renewal of the license as
9 provisional; otherwise, a license in usual form ~~shall~~ must
10 be issued subject to other provisions of the laws of
11 Montana.

12 (6) It ~~shall-be~~ is unlawful for any person to have in
13 his possession or under his control more than one Montana
14 driver's license at any one time. A license is not valid for
15 the operation of a motorcycle or quadricycle until the
16 holder thereof has completed the requirements of 61-5-110
17 and the license has been clearly marked with the words
18 "motorcycle endorsement". A license is not valid for the
19 operation of a commercial vehicle until the holder thereof
20 has completed the requirements of 61-5-110 and the license
21 has been clearly marked with the words "commercial vehicle
22 operator's endorsement".

23 (7) Fees for driver's licenses ~~shall--be--as--follows~~
24 are:

25 (4) driver's license -- \$3 per year or fraction

1 thereof;

2 (b) motorcycle endorsement -- 50 cents per year or
3 fraction thereof;

4 (c) commercial vehicle operator's endorsement:

5 (i) interstate -- \$3 per year or fraction thereof;

6 (ii) intrastate -- \$1.50 per year or fraction thereof.

7 (8) A license designated as a chauffeur's license as
8 of January 1, 1988, is valid as a commercial vehicle
9 operator's endorsement until the expiration of the license.

10 (9) ~~On--or-after-January-17-1988-if-the~~ The holder of
11 a chauffeur's license ~~wishes-to may~~ convert his chauffeur's
12 license to a commercial vehicle operator's endorsement~~7-he~~
13 ~~may-do--so~~ by paying the appropriate fee covering the
14 remainder of the life of his license and complying with the
15 requirements established by the department.

16 (10) ~~After-January-17-19887-the~~ The holder of a valid
17 chauffeur's license who is renewing and wishes to obtain a
18 commercial vehicle operator's endorsement may do so upon
19 paying the appropriate fees and complying with the
20 requirements established by the department.

21 ~~{11}-After-January-17-19887-the--holder--of--a--valid~~
22 ~~operator's7-chauffeur's7--or--driver's-license-may-obtain-a~~
23 ~~hazardous-material-endorsement-by-successfully-completing--a~~
24 ~~written-examination7-~~

25 **Section 11.** Section 61-1-134, MCA, is amended to read:

1 "61-1-134. Commercial motor vehicle defined --
2 exceptions. (1) "Commercial motor vehicle" means a motor
3 vehicle used to transport passengers or property if the
4 vehicle:

5 (a) has a gross vehicle weight of 26,001 pounds or
6 more;

7 (b) is designed to transport more than 15 passengers,
8 including the driver; or

9 (c) is used to transport hazardous material.

10 (2) Vehicles operated within the state of Montana
11 ~~which that~~ are registered as paying the 16% gross weight fee
12 under 61-10-206 are not commercial motor vehicles under this
13 section.

14 (3) Vehicles that are operated within the state of
15 Montana by farmers or persons employed by farmers who are
16 transporting farm products or farm supplies and that are
17 operated within 150 miles of the farm headquarters are not
18 considered commercial motor vehicles under this section."

19 **Section 12.** Section 61-5-204, MCA, is amended to read:

20 "61-5-204. Suspending resident's license upon
21 conviction in another state. The department is authorized to
22 suspend or revoke the driver's license and commercial
23 vehicle operator's endorsement or just the commercial
24 vehicle operator's endorsement of any resident of this state
25 or the privilege of a nonresident to drive a motor vehicle

1 in this state upon receiving notice of the conviction of
 2 such the person in another state jurisdiction of an offense
 3 therein in that jurisdiction which, if committed in this
 4 state, would be grounds for the suspension or revocation of
 5 the driver's license or commercial vehicle operator's
 6 endorsement."

7 **Section 13.** Section 61-5-208, MCA, is amended to read:

8 "61-5-208. Period of suspension or revocation. (1) The
 9 department may not suspend or revoke a driver's license,
 10 commercial vehicle operator's endorsement, or privilege to
 11 drive a motor vehicle on the public highways for a period of
 12 more than 1 year, except as permitted under 61-5-207,
 13 61-5-212, 61-6-123, and 61-11-211, and [sections 3 through
 14 5].

15 (2) Any A person whose license, commercial vehicle
 16 operator's endorsement, or privilege to drive a motor
 17 vehicle on the public highways has been suspended or revoked
 18 is not entitled to have such the license, endorsement, or
 19 privilege renewed or restored unless the revocation was for
 20 a cause which has been removed, except that after the
 21 expiration of the period of such the revocation or
 22 suspension, the person may make application for a new
 23 license or endorsement as provided by law but the department
 24 may not then issue a new license or endorsement unless and
 25 until it is satisfied, after investigation of the driving

1 ability of the person and upon a showing by its records or
 2 other sufficient evidence, that the person is eligible to be
 3 licensed to drive in this-state Montana. When any person is
 4 convicted or forfeits bail or collateral not vacated for the
 5 offense of operating or being in actual physical control of
 6 a motor vehicle while under the influence of alcohol or any
 7 drug or a combination thereof or for the offense of
 8 operation of a motor vehicle by a person with alcohol
 9 concentration of 0.10 or more, the department shall, upon
 10 receiving a report of such conviction or forfeiture of bail
 11 or collateral not vacated, suspend the license, including
 12 any commercial vehicle operator's endorsement, or driving
 13 privilege of the person for a period of 6 months. Upon
 14 receiving a report of a conviction or forfeiture of bail or
 15 collateral for a second, third, or subsequent offense within
 16 5 years of the first offense, the department shall revoke
 17 the license, including any commercial vehicle operator's
 18 endorsement, or driving privilege of the person for a period
 19 of 1 year.

20 (3) The period for all revocations made mandatory by
 21 61-5-205 ~~shall be~~ is 1 year except as provided in subsection
 22 ~~(2) of this section.~~

23 (4) The period of revocation for any person convicted
 24 of any offense which makes mandatory the revocation of the
 25 driver's license commences from date of conviction or

1 forfeiture of bail."

2 **Section 14.** Section 61-8-405, MCA, is amended to read:

3 "61-8-405. Administration of tests. (1) Only a
4 physician or registered nurse or other qualified person
5 under the supervision and direction of a physician or
6 registered nurse acting at the request of a peace officer
7 may withdraw blood for the purpose of determining the
8 alcoholic content therein. This limitation ~~shall~~ does not
9 apply to the taking of breath or urine specimens.

10 (2) The person tested may, at his own expense, have a
11 physician or registered nurse of his own choosing administer
12 a test, in addition to any administered at the direction of
13 a peace officer, for the purpose of determining the amount
14 of alcohol in his blood at the time alleged as shown by
15 chemical analysis of his blood, breath, or urine. The
16 failure or inability to obtain an additional test by a
17 person ~~shall~~ does not preclude the admissibility in evidence
18 of the test taken at the direction of a peace officer.

19 (3) Upon the request of the person tested, full
20 information concerning the test taken at the direction of
21 the peace officer ~~shall~~ must be made available to him or his
22 attorney.

23 (4) No physician or registered nurse or other
24 qualified person under the supervision and direction of a
25 physician or registered nurse shall incur any civil or

1 criminal liability as a result of the proper administering
2 of a blood test when requested in writing by a peace officer
3 to administer such a test.

4 (5) If the test given under 61-8-402 or [section 6] is
5 a chemical test of urine, the person tested ~~shall~~ must be
6 given such privacy in the taking of the urine specimen as
7 will insure the accuracy of the specimen and, at the same
8 time, maintain the dignity of the individual involved.

9 (6) The department of justice in cooperation with any
10 appropriate agency shall adopt uniform rules for the giving
11 of blood alcohol tests and may require certification of
12 training to administer such the tests as deemed considered
13 necessary."

14 **NEW SECTION. Section 15.** Extension of authority. Any
15 existing authority to make rules on the subject of the
16 provisions of [this act] is extended to the provisions of
17 [this act].

18 **NEW SECTION. Section 16.** Codification instruction.
19 [Sections 1 through 8] are intended to be codified as an
20 integral part of Title 61, chapter 8, and the provisions of
21 Title 61, chapter 8, apply to [sections 1 through 8].

-End-

1 SENATE BILL NO. 355
2 INTRODUCED BY FARRELL
3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GOVERNING THE ISSUANCE
6 AND USE OF COMMERCIAL VEHICLE OPERATOR'S ENDORSEMENTS AND
7 BRINGING MONTANA STATUTES INTO COMPLIANCE WITH FEDERAL
8 REGULATIONS; PROVIDING FOR SUSPENSION OF COMMERCIAL MOTOR
9 VEHICLE OPERATOR'S ENDORSEMENTS; PROVIDING FOR CERTAIN
10 CHEMICAL TESTS; PROVIDING FOR APPEAL; REMOVING A METHOD TO
11 OBTAIN A HAZARDOUS MATERIAL ENDORSEMENT; AND AMENDING
12 SECTIONS 61-1-134, 61-5-103, 61-5-111, 61-5-204, 61-5-208,
13 AND 61-8-405, MCA."
14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
16 NEW SECTION. **Section 1. Purpose.** (1) The purpose of
17 [this act] is to reduce the number of commercial motor
18 vehicle accidents in Montana, to provide greater safety to
19 the motoring public and others by establishing stringent
20 criteria governing the operation of commercial motor
21 vehicles, and to deny the privilege of operating commercial
22 motor vehicles upon the public streets and highways to those
23 commercial motor vehicle operators who are determined to be
24 not qualified.
25 (2) To fulfill this purpose, the legislature intends

There is no change on SB 355 and
will not be reprinted. Please
refer to second reading (yellow)
for complete text.

SENATE BILL NO. 355

INTRODUCED BY FARRELL

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GOVERNING THE ISSUANCE AND USE OF COMMERCIAL VEHICLE OPERATOR'S ENDORSEMENTS AND BRINGING MONTANA STATUTES INTO COMPLIANCE WITH FEDERAL REGULATIONS; PROVIDING FOR SUSPENSION OF COMMERCIAL MOTOR VEHICLE OPERATOR'S ENDORSEMENTS; PROVIDING FOR CERTAIN CHEMICAL TESTS; PROVIDING FOR APPEAL; REMOVING A METHOD TO OBTAIN A HAZARDOUS MATERIAL ENDORSEMENT; AND AMENDING SECTIONS 61-1-134, 61-5-103, 61-5-111, 61-5-204, 61-5-208, AND 61-8-405, MCA."

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

NEW SECTION. Section 1. Purpose. (1) The purpose of

[this act] is to reduce the number of commercial motor vehicle accidents in Montana, to provide greater safety to the motoring public and others by establishing stringent criteria governing the operation of commercial motor vehicles, and to deny the privilege of operating commercial motor vehicles upon the public streets and highways to those commercial motor vehicle operators who are determined to be not qualified.

(2) To fulfill this purpose, the legislature intends

that [sections 1 through 8]:

(a) establish criteria and procedures for the operation of commercial motor vehicles that require safety practices commensurate with the danger inherent to their operation;

(b) provide for increased administrative punishment for commercial motor vehicle operators who use alcohol while operating commercial motor vehicles;

(c) provide greater control of commercial motor vehicle operators using the streets and highways; and

(d) conform Montana's laws on commercial motor vehicle operator's endorsements with federal regulations based on Public Law 99-570, "Commercial Motor Vehicle Safety Act of 1986".

NEW SECTION. Section 2. Suspension of commercial vehicle operator's endorsement -- disqualification. (1) The department shall suspend the commercial vehicle operator's endorsement of any commercial operator if the department's records or information received from federal authorities shows that the person is disqualified under federal law.

(2) A commercial vehicle operator's endorsement suspended pursuant to this section remains suspended for the duration of the period of disqualification under federal regulations.

(3) A person whose commercial vehicle operator's

1 endorsement is suspended under this section due to
2 disqualification:

3 (a) may appeal the suspension as provided in 61-5-211;
4 and

5 (b) may not operate a commercial vehicle until the
6 suspension is lifted and his commercial vehicle operator's
7 endorsement is restored.

8 NEW SECTION. Section 3. Suspension of commercial
9 vehicle operator's endorsement -- serious traffic
10 violations. If a commercial motor vehicle operator's record
11 shows that he has been convicted of ~~an offense that subjects~~
12 ~~him to an accumulation of points under 61-11-203 or as~~
13 provided by OF A SERIOUS TRAFFIC VIOLATION AS DEFINED IN
14 federal regulations, the department shall suspend the
15 commercial vehicle operator's endorsement:

16 (1) for 60 days if the operator was convicted of two
17 hazardous moving violations within 3 years; or

18 (2) for 120 days if the operator was convicted of
19 three hazardous moving violations within 3 years.

20 NEW SECTION. Section 4. Suspension of commercial
21 vehicle operator's endorsement -- felony involving a
22 controlled substance while driving a commercial vehicle. If
23 the department receives information that a commercial motor
24 vehicle operator has been convicted of using a commercial
25 motor vehicle in the commission of a felony involving the

1 manufacture, distribution, or dispensing of a controlled
2 substance, as defined by federal regulations, or a felony
3 involving possession with intent to manufacture, distribute,
4 or dispense a controlled substance, the department shall
5 suspend his commercial vehicle operator's endorsement for
6 life.

7 NEW SECTION. Section 5. Suspension for operating a
8 commercial vehicle with a blood alcohol concentration of
9 0.04 or more -- hearing. (1) A person whose blood alcohol
10 concentration is 0.04 or more while he drives or is in
11 actual physical control of a commercial motor vehicle is
12 subject to the suspension of his commercial vehicle
13 operator's endorsement. If the department receives a sworn
14 report from a peace officer that the person was operating a
15 commercial motor vehicle while his blood alcohol
16 concentration was 0.04 or more, the department shall suspend
17 the driver's commercial vehicle operator's endorsement:

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

23 (b) for 10 years, with no provision for a restricted
24 probationary license or endorsement, upon receipt of a
25 second or subsequent report at any time as determined from

1 the records of the department.

2 (2) A peace officer who determines that a commercial
3 motor vehicle operator's blood alcohol concentration is 0.04
4 or more shall place the commercial motor vehicle operator
5 out of service as mandated by federal regulations for 24
6 hours.

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

11 (4) The department shall immediately notify in writing
12 any person whose commercial vehicle operator's endorsement
13 is suspended under this section. The person suspended has
14 the right to file a petition within 30 days after the notice
15 is given for a hearing in the matter in the district court
16 in the county in which the finding of blood alcohol
17 concentration was made. The court has jurisdiction and
18 shall set the matter for hearing upon 10 days' written
19 notice to the county attorney of the county in which the
20 appeal is filed. The county attorney shall represent the
21 state. The court shall take testimony and examine the facts
22 of the case, except that the issue is limited to whether the
23 person was driving or had actual physical control of a
24 commercial motor vehicle while his blood alcohol
25 concentration was 0.04 or more. The court shall determine

1 whether the petitioner is entitled to a commercial vehicle
2 operator's endorsement or is subject to suspension as
3 provided in this section. The provisions of 61-8-404 apply
4 to any proceedings under this section.

5 NEW SECTION. **Section 6. Chemical blood, breath, or**
6 **urine tests of commercial vehicle operators -- procedure --**
7 **suspension.** (1) A person who operates a commercial motor
8 vehicle upon the ways of this state open to the public is
9 considered to have given consent, subject to the provisions
10 of 61-8-401 and [section 5], to a chemical test of his
11 blood, breath, or urine for the purpose of determining the
12 alcohol content of his blood if he is requested to submit to
13 the test by a peace officer having reasonable grounds to
14 believe the person to have been driving or in actual
15 physical control of a commercial motor vehicle upon the ways
16 of this state open to the public while his blood alcohol
17 concentration was 0.04 or more. The peace officer may
18 designate a blood, breath, or urine test to be administered.

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

22 (3) If a commercial motor vehicle operator who is a
23 resident of Montana refuses upon the request of a peace
24 officer to submit to a chemical test designated by the
25 officer as provided in subsection (1), the test may not be

1 given. On behalf of the department, the officer shall
 2 immediately seize the person's driver's license showing the
 3 commercial vehicle operator's endorsement and forward the
 4 license to the department, along with a sworn report that he
 5 had reasonable grounds to believe the person had been
 6 driving or was in actual physical control of a commercial
 7 motor vehicle upon ways of this state open to the public
 8 while having a blood alcohol concentration of 0.04 or more
 9 and that the person had refused to submit to the test upon
 10 the request of the officer. Upon receipt of the report, the
 11 department shall suspend the license for a period provided
 12 in subsection (5).

13 (4) Upon seizure of a resident's driver's license
 14 showing a commercial vehicle operator's endorsement, the
 15 peace officer shall issue, on behalf of the department, a
 16 temporary driving permit without the commercial vehicle
 17 operator's endorsement. The temporary driving permit is
 18 valid for 72 hours after issuance.

19 (5) If a commercial motor vehicle operator refuses to
 20 submit to a chemical test as provided in subsection (3), the
 21 department shall suspend his commercial vehicle operator's
 22 endorsement:

23 (a) upon first refusal, for 1 year, with no provision
 24 for a restricted probationary license or endorsement, except
 25 that if the offense occurred in a commercial motor vehicle

1 transporting hazardous materials, the suspension for a first
 2 refusal must be for 3 years;

3 (b) upon a second or subsequent refusal at any time as
 4 determined from the records of the department, for 10 years,
 5 with no provision for a restricted probationary license or
 6 endorsement.

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

12 NEW SECTION. **Section 7. Right of appeal of court.** The
 13 department shall immediately notify in writing any person
 14 whose commercial vehicle operator's endorsement has been
 15 suspended under the provisions of [section 6], and the
 16 person may, within 30 days after receipt of notification,
 17 file a petition for a hearing on the matter in the district
 18 court in the county where the person resides or in the
 19 district court in the county where the finding of refusal
 20 was made. The court has jurisdiction and shall set the
 21 matter for hearing upon 10 days' written notice to the
 22 county attorney of the county where the appeal is filed.
 23 The county attorney shall represent the state. The court
 24 shall take testimony and examine the facts of the case,
 25 except that the issue is limited to whether a peace officer

had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while the person had a blood alcohol concentration of 0.04 or more, whether the person was ordered to submit to a test, and whether the person refused to submit to the test. The court shall determine whether the petitioner is entitled to a commercial vehicle operator's endorsement or is subject to suspension as provided in [sections 1 through 8].

NEW SECTION. Section 8. Administration of tests. (1) Tests required under [sections 1 through 8] must be administered as provided in 61-8-405.

(2) THE DEPARTMENT MAY AUTHORIZE A PRIVATE INDIVIDUAL, INSTITUTION, OR CORPORATION TO ADMINISTER REQUIRED DRIVING EXAMINATIONS THAT WOULD OTHERWISE BE ADMINISTERED BY THE DEPARTMENT IF THEY HAVE BEEN OFFICIALLY TRAINED AND CERTIFIED TO CONDUCT THEM BY THE DEPARTMENT AND THE THIRD PARTY HAS ENTERED INTO AN AGREEMENT WITH THE DEPARTMENT THAT COMPLIES WITH THE REQUIREMENTS OF 49 C.F.R. PART 383.75.

Section 9. Section 61-5-103, MCA, is amended to read:

"61-5-103. Residency requirement. (1) Any person who has resided in this--state Montana for a--period--exceeding more than 90 days is considered to be a resident for the purpose of being licensed to operate a motor vehicle and must thereafter be licensed under the laws of this--state

Montana before operating a motor vehicle.

(2) A person who operates a commercial motor vehicle in Montana is considered to be a resident of Montana for the purpose of being licensed to operate a commercial motor vehicle if he has resided in Montana for more than 30 days and must thereafter be licensed under the laws of Montana before operating any commercial motor vehicle."

Section 10. Section 61-5-111, MCA, is amended to read:

"61-5-111. Renewals, expirations, and fees for licenses, permits, and endorsements. (1) The department ~~shall--have~~ has authority to appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing such sales. In those areas where the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may not appoint an agent. The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to every qualifying applicant ~~qualifying therefor--a-driver's-license--as--applied--for~~. The license shall contain a full-face photograph of the licensee in the size and form as prescribed by the department, except as provided in subsection (4); a distinguishing number issued to the licensee; the full name, date of birth, residence address, and a brief description of the licensee; and either

1 a facsimile of the signature of the licensee or a space upon
2 which he shall write his signature in pen and ink
3 immediately upon receipt of the license. ~~No A license shall~~
4 ~~be is not~~ valid until it ~~has--been--so~~ is signed by the
5 licensee.

6 (2) (a) The department shall, when any person applies
7 for renewal of a driver's license, test the applicant's
8 eyesight and may also in the department's discretion have
9 the applicant demonstrate his physical ability to operate
10 and to exercise ordinary and reasonable care in the
11 operation of a motor vehicle.

12 (b) In the case of commercial vehicle operator's
13 endorsements, the department may also require that the
14 applicant successfully complete a written examination as
15 required by federal regulations.

16 (c) A person ~~shall-be~~ is considered to have applied
17 for renewal of a Montana driver's license if the application
18 is made within 3 months of the expiration of his license.

19 (3) ~~licenses--shall--expire~~ A license expires on the
20 anniversary of the date of birth of the licensee 4 years or
21 less after the date of issue.

22 (4) A license issued to a person under the age of 21
23 years must contain a photograph of the licensee's profile.

24 (5) Whenever the department issues an original license
25 to a person under the age of 18 years, the license shall be

1 designated and clearly marked as a "provisional license".
2 Any license ~~so~~ designated and marked as provisional may be
3 suspended by the department for a period of not more than 12
4 months, when its records disclose that the licensee,
5 subsequent to the issuance of such license, has been guilty
6 of careless or negligent driving. Upon renewal the
7 department may, for any reasonable cause as shown by its
8 records, designate the renewal of the license as
9 provisional; otherwise, a license in usual form ~~shall~~ must
10 be issued subject to other provisions of the laws of
11 Montana.

12 (6) It ~~shall-be~~ is unlawful for any person to have in
13 his possession or under his control more than one Montana
14 driver's license at any one time. A license is not valid for
15 the operation of a motorcycle or quadricycle until the
16 holder thereof has completed the requirements of 61-5-110
17 and the license has been clearly marked with the words
18 "motorcycle endorsement". A license is not valid for the
19 operation of a commercial vehicle until the holder thereof
20 has completed the requirements of 61-5-110 and the license
21 has been clearly marked with the words "commercial vehicle
22 operator's endorsement".

23 (7) Fees for driver's licenses ~~shall--be--as--follows~~
24 are:

25 (a) driver's license -- \$3 per year or fraction

thereof;

(b) motorcycle endorsement -- 50 cents per year or fraction thereof;

(c) commercial vehicle operator's endorsement:

(i) interstate -- \$3 per year or fraction thereof;

(ii) intrastate -- \$1.50 per year or fraction thereof.

(8) A license designated as a chauffeur's license as of January 1, 1988, is valid as a commercial vehicle operator's endorsement until the expiration of the license.

(9) ~~On--or--after--January--17--1988--if--the~~ The holder of a chauffeur's license wishes to may convert his chauffeur's license to a commercial vehicle operator's endorsement; ~~he may--do--so~~ by paying the appropriate fee covering the remainder of the life of his license and complying with the requirements established by the department.

(10) ~~After--January--17--1988--the~~ The holder of a valid chauffeur's license who is renewing and wishes to obtain a commercial vehicle operator's endorsement may do so upon paying the appropriate fees and complying with the requirements established by the department.

~~11--After--January--17--1988--the--holder--of--a--valid operator's--chauffeur's--or--driver's--license--may--obtain--a hazardous-material-endorsement--by--successfully--completing--a written-examination--"~~

Section 11. Section 61-1-134, MCA, is amended to read:

"61-1-134. Commercial motor vehicle defined -- exceptions. (1) "Commercial motor vehicle" means a motor vehicle used to transport passengers or property if the vehicle:

(a) has a gross vehicle weight of 26,001 pounds or more;

(b) is designed to transport more than 15 passengers, including the driver; or

(c) is used to transport hazardous material.

(2) Vehicles operated within the state of Montana which that are registered as paying the 16¢ gross weight fee under 61-10-206 are not commercial motor vehicles under this section.

(3) Vehicles that are operated within the state of Montana by farmers or persons employed by farmers who are transporting farm products or farm supplies and that are operated within 150 miles of the farm headquarters are not considered commercial motor vehicles under this section."

Section 12. Section 61-5-204, MCA, is amended to read:

"61-5-204. Suspending resident's license upon conviction in another state. The department is authorized to suspend or revoke the driver's license and commercial vehicle operator's endorsement or just the commercial vehicle operator's endorsement of any resident of this state or the privilege of a nonresident to drive a motor vehicle

in this state upon receiving notice of the conviction of such the person in another state jurisdiction of an offense therein in that jurisdiction which, if committed in this state, would be grounds for the suspension or revocation of the driver's license or commercial vehicle operator's endorsement."

Section 13. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation. (1) The department may not suspend or revoke a driver's license, commercial vehicle operator's endorsement, or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as permitted under 61-5-207, 61-5-212, 61-6-123, and 61-11-211, and sections 3 through 5).

(2) Any A person whose license, commercial vehicle operator's endorsement, or privilege to drive a motor vehicle on the public highways has been suspended or revoked is not entitled to have such the license, endorsement, or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such the revocation or suspension, the person may make application for a new license or endorsement as provided by law but the department may not then issue a new license or endorsement unless and until it is satisfied, after investigation of the driving

ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in ~~this-state~~ Montana. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination thereof or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend the license, including any commercial vehicle operator's endorsement, or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license, including any commercial vehicle operator's endorsement, or driving privilege of the person for a period of 1 year.

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

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

1 forfeiture of bail."

2 **Section 14.** Section 61-8-405, MCA, is amended to read:

3 "61-8-405. Administration of tests. (1) Only a
4 physician or registered nurse or other qualified person
5 under the supervision and direction of a physician or
6 registered nurse acting at the request of a peace officer
7 may withdraw blood for the purpose of determining the
8 alcoholic content therein. This limitation ~~shall~~ does not
9 apply to the taking of breath or urine specimens.

10 (2) The person tested may, at his own expense, have a
11 physician or registered nurse of his own choosing administer
12 a test, in addition to any administered at the direction of
13 a peace officer, for the purpose of determining the amount
14 of alcohol in his blood at the time alleged as shown by
15 chemical analysis of his blood, breath, or urine. The
16 failure or inability to obtain an additional test by a
17 person ~~shall~~ does not preclude the admissibility in evidence
18 of the test taken at the direction of a peace officer.

19 (3) Upon the request of the person tested, full
20 information concerning the test taken at the direction of
21 the peace officer ~~shall~~ must be made available to him or his
22 attorney.

23 (4) No physician or registered nurse or other
24 qualified person under the supervision and direction of a
25 physician or registered nurse shall incur any civil or

1 criminal liability as a result of the proper administering
2 of a blood test when requested in writing by a peace officer
3 to administer such a test.

4 (5) If the test given under 61-8-402 or [section 6] is
5 a chemical test of urine, the person tested ~~shall~~ must be
6 given such privacy in the taking of the urine specimen as
7 will insure the accuracy of the specimen and, at the same
8 time, maintain the dignity of the individual involved.

9 (6) The department of justice in cooperation with any
10 appropriate agency shall adopt uniform rules for the giving
11 of blood alcohol tests and may require certification of
12 training to administer such the tests as deemed considered
13 necessary."

14 NEW SECTION. **Section 15.** Extension of authority. Any
15 existing authority to make rules on the subject of the
16 provisions of [this act] is extended to the provisions of
17 [this act].

18 NEW SECTION. **Section 16.** Codification instruction.
19 [Sections 1 through 8] are intended to be codified as an
20 integral part of Title 61, chapter 8, and the provisions of
21 Title 61, chapter 8, apply to [sections 1 through 8].

-End-