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SENATE BILL NO. 34

2

INTRODUCED BY SWYSGOOD

3

BY REQUEST OF THE DEPARTMENT OF JUSTICE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS PERTAINING TO COMMERCIAL
6 MOTORVEHICLES; REVISING DEFINITIONS; CREATING A THIRD-PARTY COMMERCIALDRIVER TESTING
7 PROGRAM; WAIVING DRIVING TESTS FOR A QUALIFIED APPLICANT WORKING IN A FARM-RELATED
8 SERVICE INDUSTRY AND MEETING THE REQUIREMENTS FOR A SEASONAL COMMERCIAL DRIVER'S
9 LICENSE; REQUIRING COMMERCIAL DRIVERS HAVING ANY MEASURABLE OR DETECTABLE ALCOHOL
10 CONCENTRATION TO SUBMIT TO TESTING; CLARIFYING THE STATUS OF CERTAIN FERTILIZER
11 SPREADER TRUCKS AND SPREADER TRAILERS AS COMMERCIAL MOTOR VEHICLES; AMENDING
12 SECTIONS 61-1-134, 61-1-502, 61-5-104, 61-5-110, 61-5-117, 61-8-806, AND 61-8-808, MCA; AND
13 PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

14

15

STATEMENT OF INTENT

16

17 A statement of intent is required for this bill to provide guidelines for the adoption of rules under
18 61-5-117 by which the department of justice may certify and monitor a third-party commercial driver testing
19 program. The rules should set forth procedures to ensure that the testing is conducted according to
20 uniform standards and by competent examiners. The rules may limit the number of participants or delay
21 participation in a third-party testing program to ensure that it can be administered without having to add
22 additional full-time employees to the department.

23

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

24

25

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

26

27

28

"61-1-134. Commercial motor vehicle defined -- exceptions. (1) "Commercial Except as provided
in subsection (2), "commercial motor vehicle" means a motor vehicle used to transport passengers or
property if the vehicle:

29

(a) has a gross vehicle weight or manufacturer's rated capacity of 26,001 pounds or more;

30

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

1 who holds a valid license issued by another state and the spouse of ~~such a~~ the person who holds a valid
2 license issued by another state and who is not employed in Montana, except as a member of the armed
3 forces; ~~if~~. If a spouse of a member of the armed forces becomes gainfully employed in Montana, the
4 spouse must be licensed, as required by 61-5-102, within 90 days of becoming ~~so~~ employed;

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

8 (d) a person while driving or operating any road machine, farm tractor, or implement of husbandry
9 temporarily operated or moved on a highway;

10 (e) a person who is a locomotive engineer, assistant engineer, conductor, brakeman, railroad utility
11 person, or other member of the crew of a railroad locomotive or train being operated upon rails, including
12 operation on a railroad crossing a public street, road, or highway. A person employed as described in this
13 subsection is not required to display a driver's license to a law enforcement officer in connection with the
14 operation of a railroad locomotive or train within Montana.

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

18 (3) A nonresident ~~who is at least 18 years of age not otherwise exempt from the licensing~~
19 requirements of 49 CFR, part 391, and ~~who has~~ in his immediate possession of a valid commercial
20 operator's driver's license issued to ~~him~~ in his the nonresident by the nonresident's home state or country
21 may operate a ~~motor vehicle or~~ commercial motor vehicle in this state ~~subject to the age limits applicable~~
22 ~~to commercial vehicle operators in this state~~.

23 (4) A nonresident who is at least 18 years of age, whose home state or country does not require
24 the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than
25 90 days in any calendar year, if the motor vehicle ~~so operated~~ is ~~duly~~ registered in the home state or
26 country of ~~such~~ the nonresident.

27 (5) A driver's license issued under this chapter to any person who enters the United States armed
28 forces, if valid and in ~~force and effect~~ at the time that the person enters the service, continues in ~~full force~~
29 ~~and effect~~ so long as the service continues, unless the license is sooner suspended, revoked, or canceled
30 for a cause as provided by law, and for not to exceed 30 days following the date on which ~~holder of the~~

1 ~~driver's license the licensee~~ is honorably separated from the service. During the 30-day period, the license
2 is valid only when ~~in the immediate possession of the licensee while driving and the licensee has his the~~
3 ~~license and the licensee's~~ discharge, separation, leave, or furlough papers ~~are in his the licensee's~~
4 immediate possession."

5

6 **Section 4.** Section 61-5-110, MCA, is amended to read:

7 "**61-5-110. (Temporary) Examination of applicants.** (1) The department shall examine ~~every each~~
8 applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section.
9 The examination must include a test of the applicant's eyesight, ~~a knowledge test examining~~ the applicant's
10 ability to read and understand highway signs, ~~regulating, warning, and directing traffic, the applicant's the~~
11 ~~applicant's~~ knowledge of the traffic laws of this state, and ~~must include an actual demonstration of, except~~
12 ~~as provided in [section 6], a road test or a skills test demonstrating the applicant's ability to exercise~~
13 ordinary and reasonable control in the operation of a motor vehicle, quadricycle, or motorcycle. The
14 examination for the commercial driver's license may include additional items. ~~The knowledge test and the~~
15 ~~road test or the skills test must be waived for an applicant who works in a farm-related service industry and~~
16 ~~who otherwise meets the requirements for a seasonal commercial driver's license as set forth in this title~~
17 ~~and rules adopted by the department.~~

18 (2) ~~Within 90 days of receipt of an application for a commercial driver's license, the department~~
19 ~~shall give an examination to the applicant in the county where the applicant resides.~~

20 (3) Except as otherwise provided by law, a resident who has a valid driver's license issued by
21 another state may surrender that license for a Montana license of the same class, type, and endorsement
22 upon payment of the required fees. A resident who obtains a Montana driver's license in this manner is
23 exempt from the ~~written examination and actual demonstration of the operation of a motor vehicle~~
24 ~~knowledge test and the road test or the skills test~~ provided for in subsection (1) but is not exempt from the
25 eyesight test or, in the case of commercial drivers, any examination required by federal regulations."

26

27 **Section 5.** Section 61-5-110, MCA, is amended to read:

28 "**61-5-110. (Effective October 1, 1999) Examination of applicants.** (1) The department shall
29 examine ~~every each~~ applicant for a driver's license or motorcycle endorsement, except as otherwise
30 provided in this section. The examination must include a test of the applicant's eyesight, ~~a knowledge test~~

1 examining the applicant's ability to read and understand highway signs, regulating, warning, and directing
2 traffic, the applicant's the applicant's knowledge of the traffic laws of this state, and must include an actual
3 demonstration of a road test or a skills test demonstrating the applicant's ability to exercise ordinary and
4 reasonable control in the operation of a motor vehicle, quadricycle, or motorcycle. The examination for the
5 commercial driver's license may include additional items. The knowledge test and the road test or the skills
6 test must be waived for an applicant who works in a farm-related service industry and who otherwise meets
7 the requirements for a seasonal commercial driver's license as set forth in this title and rules adopted by
8 the department.

9 (2) ~~Within 90 days of receipt of an application for a commercial driver's license, the department~~
10 ~~shall give an examination to the applicant in the county where the applicant resides.~~

11 ~~(3) Except as otherwise provided by law, a resident who has a valid driver's license issued by~~
12 ~~another state may surrender that license for a Montana license of the same class, type, and endorsement~~
13 ~~upon payment of the required fees. A resident who obtains a Montana driver's license in this manner is~~
14 ~~exempt from the written examination and actual demonstration of the operation of a motor vehicle~~
15 ~~knowledge test and the road test or the skills test~~ provided for in subsection (1) but is not exempt from the
16 eyesight test or, in the case of commercial drivers, any examination required by federal regulations."

17
18 **NEW SECTION. Section 6. (Temporary) Third-party commercial driver testing program -- test**
19 **waiver.** (1) The department may certify as a third-party commercial driver testing program any company
20 that:

21 (a) in the course of its commercial enterprise, customarily transports or hauls any goods, including
22 agricultural commodities, in company-owned class A commercial motor vehicles as prescribed by federal
23 regulations;

24 (b) regularly and continuously employs a minimum number of drivers. The department shall
25 determine the minimum number of drivers and whether they are regularly and continuously employed by
26 the company.

27 (c) has a permanent Montana mailing address and maintains a place of business in this state that
28 includes at least one permanent, regularly occupied structure with facilities and equipment to conduct
29 offstreet skills testing;

30 (d) employs at least one examiner with qualifications required by rules of the department; and

1 (e) complies with rules adopted by the department under 61-5-117.

(2) The road test or the skills test required by 61-5-110 may be waived by the department for a commercial driver's license applicant upon certification of the applicant's successful completion of the road test or the skills test by a certified third-party commercial driver testing program.

9

10 **Section 7.** Section 61-5-117, MCA, is amended to read:

"61-5-117. Rulemaking authority. The department may adopt rules to implement the issuance and enforcement of classified commercial driver's licenses and shall adopt rules implementing [section 6]."

13

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

"61-8-806. Blood, breath, or urine tests of commercial vehicle operators -- procedure -- suspension.

(1) A person who operates a commercial motor vehicle upon the ways of this state open to the public is considered to have given consent, subject to the provisions of 61-8-401 and 61-8-805, to a test of the operator's blood, breath, or urine for the purpose of determining any measured or detected amount of alcohol in the operator's body if the operator is requested to submit to the test by a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public while ~~the person's blood having any measurable or detectable~~ alcohol concentration ~~was 0.04 or more~~. The peace officer may designate a blood, breath, or urine test to be administered.

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

(3) If a commercial motor vehicle operator who is a resident of Montana refuses upon the request of a peace officer to submit to a test designated by the officer as provided in subsection (1), the test may not be given. On behalf of the department, the officer shall immediately seize the person's commercial driver's license and forward the license to the department, along with a sworn report that the officer had reasonable grounds to believe that the person had been driving or was in actual physical control of a



1 commercial motor vehicle upon ways of this state open to the public while having ~~an~~ any measurable or
2 detectable alcohol concentration ~~of 0.04 or more~~ and that the person had refused to submit to the test
3 upon the request of the officer. Upon receipt of the report, the department shall suspend the license for
4 a period provided in subsection (5).

5 (4) Upon seizure of a resident's commercial driver's license, the peace officer shall issue, on behalf
6 of the department, a temporary noncommercial driving permit. The temporary driving permit is valid for
7 72 hours after issuance.

8 (5) If a commercial motor vehicle operator refuses to submit to a test as provided in subsection (3),
9 the department shall suspend the operator's commercial driver's license:

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

13 (b) upon a second or subsequent refusal at any time as determined from the records of the
14 department, for life, with no provision for a restricted probationary license or endorsement unless allowed
15 by federal rules governing commercial drivers.

16 (6) A nonresident commercial motor vehicle operator who refuses to submit to a test as provided
17 in subsection (3) is subject to suspension by the department as provided in subsection (5) and must be
18 given a temporary driving permit as provided in subsection (4)."

19

20 **Section 9.** Section 61-8-808, MCA, is amended to read:

21 **"61-8-808. Right of appeal ~~of~~ to court.** The department shall immediately notify in writing any
22 person whose commercial driver's license has been suspended under the provisions of 61-8-806, and the
23 person may, within 30 days after receipt of notification, file a petition for a hearing on the matter in the
24 district court in the county where the person resides or in the district court in the county where the finding
25 of refusal was made. The court has jurisdiction and shall set the matter for hearing upon 10 days' written
26 notice to the county attorney of the county where the appeal is filed. The county attorney shall represent
27 the state. The court shall take testimony and examine the facts of the case, except that the issue is limited
28 to whether a peace officer had reasonable grounds to believe that the person had been driving or was in
29 actual physical control of a commercial motor vehicle upon ways of this state open to the public while the
30 person had ~~a~~ bleed any measurable or detectable alcohol concentration ~~of 0.04 or more~~, whether the

1 person was ordered to submit to a test, and whether the person refused to submit to the test. The court
2 shall determine whether the petitioner is entitled to a commercial driver's license or is subject to suspension
3 as provided in this part."

4

5 **NEW SECTION. Section 10. Codification instruction.** [Section 6] is intended to be codified as an
6 integral part of Title 61, chapter 5, part 1, and the provisions of Title 61 apply to [section 6].

7

8 **NEW SECTION. Section 11. Effective dates.** (1) [Sections 1 through 3 and 7 through 10 and this
9 section] are effective on passage and approval.

10 (2) [Sections 4, 6, and 12] are effective October 1, 1995.

11 (3) [Section 5] is effective October 1, 1999.

12

13 **NEW SECTION. Section 12. Termination.** [Sections 4 and 6] terminate September 30, 1999.

14

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0034, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising laws pertaining to commercial motor vehicles; revising definitions; creating a third-party commercial driver testing program.

ASSUMPTIONS:

1. A proposed privatized commercial driver license testing plan has been developed by the Attorney General's Task Force on Driver Licensing and the Department of Justice. The "Privatized Commercial Driver License Testing Program" was submitted on July 1, 1994, to the Legislative Audit Committee. This plan would be followed to implement the provisions of this bill.
2. The Department of Justice should be able to implement the program in section 6 without additional FTE or disruptions in current services.
3. The current fee structure payable to the state would remain the same.
4. Any fees charged by third party testors would be in addition to the state's fee structure. These fees would not be remitted to the State of Montana.
5. The Department of Justice would adopt administrative rules to implement Section 6 of the bill.

FISCAL IMPACT:

The passage of SB34 would produce no fiscal impact.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Section 6 is written with a September 30, 1999, termination date. Future legislation would be required to continue the privatized commercial driver license testing program.

Dave Lewis 1-4-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Charles Swysgood

CHARLES SWYSGOOD, PRIMARY SPONSOR DATE

Fiscal Note for SB0034, as introduced

APPROVED BY COM ON
HIGHWAYS & TRANSPORTATION

1 SENATE BILL NO. 34
2 INTRODUCED BY SWYSGOOD
3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS PERTAINING TO COMMERCIAL
6 MOTOR VEHICLES; REVISING DEFINITIONS; CREATING A THIRD-PARTY COMMERCIAL DRIVER TESTING
7 PROGRAM; WAIVING DRIVING TESTS FOR A QUALIFIED APPLICANT WORKING IN A FARM-RELATED
8 SERVICE INDUSTRY AND MEETING THE REQUIREMENTS FOR A SEASONAL COMMERCIAL DRIVER'S
9 LICENSE; REQUIRING COMMERCIAL DRIVERS HAVING ANY MEASURABLE OR DETECTABLE ALCOHOL
10 CONCENTRATION TO SUBMIT TO TESTING; CLARIFYING THE STATUS OF CERTAIN FERTILIZER
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12 SECTIONS 61-1-134, 61-1-502, 61-5-104, 61-5-110, 61-5-117, 61-8-806, AND 61-8-808, MCA; AND
13 PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

STATEMENT OF INTENT

16 A statement of intent is required for this bill to provide guidelines for the adoption of rules under
17 61-5-117 by which the department of justice may certify and monitor a third-party commercial driver testing
18 program. The rules should set forth procedures to ensure that the testing is conducted according to
19 uniform standards and by competent examiners. The rules may limit the number of participants or delay
20 participation in a third-party testing program to ensure that it can be administered without having to add
21 additional full-time employees to the department.

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

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

26 "61-1-134. Commercial motor vehicle defined -- exceptions. (1) Commercial Except as provided
27 in subsection (2), "commercial motor vehicle" means a motor vehicle used to transport passengers or
28 property if the vehicle;

29 (a) has a gross vehicle weight or manufacturer's rated capacity of 26,001 pounds or more;

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



1 (c) is a school bus as defined in 20-10-101; or
2 (d) is used to transport hazardous material.

(2) The following vehicles are not commercial motor vehicles under this section do not
include vehicles operated within the state of Montana that are:

5 (a) registered as paying the 35% gross weight fee under 61-10-206;

6 **(b) a vehicle exempt from taxation, used for firefighting, and that are bearing Montana tax-exempt
7 plates; or**

8 (e) (b) a police emergency response and safety education units. vehicle; or

9 (c) a vehicle:

10 (i) controlled and

(3) Vehicles that are operated ~~within the state of Montana by farmers or persons a farmer or person~~ employed by farmers who are transporting a farmer;

16 (iii) not used to transport goods for compensation or hire.

(3) For purposes of this section, "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person."

20

21 **Section 2.** Section 61-1-502, MCA, is amended to read:

"61-1-502. **Gross vehicle weight.** "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load ~~thereon~~ on the vehicle."

24

25 Section 3. Section 61-5-104, MCA, is amended to read:

26 "61-5-104. **Exemptions.** (1) The following persons are exempt from ~~licensee~~ licensure under this
27 chapter:

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

30 (b) a person who is a member of the armed forces of the United States on active duty in Montana



1 who holds a valid license issued by another state and the spouse of ~~such a~~ the person who holds a valid
2 license issued by another state and who is not employed in Montana, except as a member of the armed
3 forces; if. If a spouse of a member of the armed forces becomes gainfully employed in Montana, the
4 spouse must be licensed, as required by 61-5-102, within 90 days of becoming ~~so~~ employed.

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

8 (d) a person while driving or operating any road machine, farm tractor, or implement of husbandry
9 temporarily operated or moved on a highway;

10 (e) a person who is a locomotive engineer, assistant engineer, conductor, brakeman, railroad utility
11 person, or other member of the crew of a railroad locomotive or train being operated upon rails, including
12 operation on a railroad crossing a public street, road, or highway. A person employed as described in this
13 subsection is not required to display a driver's license to a law enforcement officer in connection with the
14 operation of a railroad locomotive or train within Montana.

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

18 (3) A nonresident ~~who is at least 18 years of age not otherwise exempt from the licensing~~
19 requirements of 49 CFR, part 391, and ~~who has~~ in his immediate possession of a valid commercial
20 operator's driver's license issued to ~~him~~ in his the nonresident by the nonresident's home state or country
21 may operate a ~~motor vehicle or~~ commercial motor vehicle in this state ~~subject to the age limits applicable~~
22 ~~to commercial vehicle operators in this state~~.

23 (4) A nonresident who is at least 18 years of age, whose home state or country does not require
24 the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than
25 90 days in any calendar year, if the motor vehicle ~~so operated~~ is ~~duly~~ registered in the home state or
26 country of ~~such~~ the nonresident.

27 (5) A driver's license issued under this chapter to any person who enters the United States armed
28 forces, if valid and in ~~force and~~ effect at the time that the person enters the service, continues in ~~full force~~
29 and effect so long as the service continues, unless the license is sooner suspended, revoked, or canceled
30 for a cause as provided by law, and for not to exceed 30 days following the date on which ~~holder of the~~

1 ~~driver's license the licensee~~ is honorably separated from the service. During the 30-day period, the license
2 is valid only when ~~in the immediate possession of the licensee while driving and the licensee has his the~~
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4 immediate possession."

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6 **Section 4.** Section 61-5-110, MCA, is amended to read:

7 **"61-5-110. (Temporary) Examination of applicants.** (1) The department shall examine every each
8 applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section.
9 The examination must include a test of the applicant's eyesight, a knowledge test examining the applicant's
10 ability to read and understand highway signs, ~~regulating, warning, and directing traffic, the applicant's the~~
11 applicant's knowledge of the traffic laws of this state, and must include an actual demonstration of, except
12 as provided in [section 6], a road test or a skills test demonstrating the applicant's ability to exercise
13 ordinary and reasonable control in the operation of a motor vehicle, quadricycle, or motorcycle. The
14 examination for the commercial driver's license may include additional items. The knowledge test and the
15 road test or the skills test must be waived for an applicant who works in a farm-related service industry and
16 who otherwise meets the requirements for a seasonal commercial driver's license as set forth in this title
17 and rules adopted by the department.

18 (2) ~~Within 90 days of receipt of an application for a commercial driver's license, the department~~
19 ~~shall give an examination to the applicant in the county where the applicant resides.~~

20 (3) Except as otherwise provided by law, a resident who has a valid driver's license issued by
21 another state may surrender that license for a Montana license of the same class, type, and endorsement
22 upon payment of the required fees. A resident who obtains a Montana driver's license in this manner is
23 exempt from the ~~written examination and actual demonstration of the operation of a motor vehicle~~
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6 test must be waived for an applicant who works in a farm-related service industry and who otherwise meets
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16 ~~eyesight test or, in the case of commercial drivers, any examination required by federal regulations."~~

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18 **NEW SECTION. Section 6. (Temporary) Third-party commercial driver testing program -- test**
19 **waiver.** (1) The department may certify as a third-party commercial driver testing program any company
20 that:

21 (a) in the course of its commercial enterprise, customarily transports or hauls any goods, including
22 agricultural commodities, in company-owned class A commercial motor vehicles as prescribed by federal
23 regulations;

24 (b) regularly and continuously employs a minimum number of drivers. The department shall
25 determine the minimum number of drivers and whether they are regularly and continuously employed by
26 the company.

27 (c) has a permanent Montana mailing address and maintains a place of business in this state that
28 includes at least one permanent, regularly occupied structure with facilities and equipment to conduct
29 offstreet skills testing;

30 (d) employs at least one examiner with qualifications required by rules of the department; and

(e) complies with rules adopted by the department under 61-5-117.

(2) The road test or the skills test required by 61-5-110 may be waived by the department for a commercial driver's license applicant upon certification of the applicant's successful completion of the road test or the skills test by a certified third-party commercial driver testing program.

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(1) A person who operates a commercial motor vehicle upon the ways of this state open to the public is considered to have given consent, subject to the provisions of 61-8-401 and 61-8-805, to a test of the operator's blood, breath, or urine for the purpose of determining any measured or detected amount of alcohol in the operator's body if the operator is requested to submit to the test by a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public while ~~the person's blood having any measurable or detectable~~ alcohol concentration ~~was 0.04 or more~~. The peace officer may designate a blood, breath, or urine test to be administered.

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



1 commercial motor vehicle upon ways of this state open to the public while having ~~an~~ any measurable or
2 detectable alcohol concentration ~~of 0.04 or more~~ and that the person had refused to submit to the test
3 upon the request of the officer. Upon receipt of the report, the department shall suspend the license for
4 a period provided in subsection (5).

5 (4) Upon seizure of a resident's commercial driver's license, the peace officer shall issue, on behalf
6 of the department, a temporary noncommercial driving permit. The temporary driving permit is valid for
7 72 hours after issuance.

8 (5) If a commercial motor vehicle operator refuses to submit to a test as provided in subsection (3),
9 the department shall suspend the operator's commercial driver's license:

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

13 (b) upon a second or subsequent refusal at any time as determined from the records of the
14 department, for life, with no provision for a restricted probationary license or endorsement unless allowed
15 by federal rules governing commercial drivers.

16 (6) A nonresident commercial motor vehicle operator who refuses to submit to a test as provided
17 in subsection (3) is subject to suspension by the department as provided in subsection (5) and must be
18 given a temporary driving permit as provided in subsection (4)."

19

20 **Section 9.** Section 61-8-808, MCA, is amended to read:

21 **"61-8-808. Right of appeal ~~of to~~ court.** The department shall immediately notify in writing any
22 person whose commercial driver's license has been suspended under the provisions of 61-8-806, and the
23 person may, within 30 days after receipt of notification, file a petition for a hearing on the matter in the
24 district court in the county where the person resides or in the district court in the county where the finding
25 of refusal was made. The court has jurisdiction and shall set the matter for hearing upon 10 days' written
26 notice to the county attorney of the county where the appeal is filed. The county attorney shall represent
27 the state. The court shall take testimony and examine the facts of the case, except that the issue is limited
28 to whether a peace officer had reasonable grounds to believe that the person had been driving or was in
29 actual physical control of a commercial motor vehicle upon ways of this state open to the public while the
30 person had ~~a blood~~ any measurable or detectable alcohol concentration ~~of 0.04 or more~~, whether the

1 person was ordered to submit to a test, and whether the person refused to submit to the test. The court
2 shall determine whether the petitioner is entitled to a commercial driver's license or is subject to suspension
3 as provided in this part."

4

5 **NEW SECTION. Section 10. Codification instruction.** [Section 6] is intended to be codified as an
6 integral part of Title 61, chapter 5, part 1, and the provisions of Title 61 apply to [section 6].

7

8 **NEW SECTION. Section 11. Effective dates.** (1) [Sections 1 through 3 and 7 through 10 and this
9 section] are effective on passage and approval.

10 (2) [Sections 4, 6, and 12] are effective October 1, 1995.

11 (3) [Section 5] is effective October 1, 1999.

12

13 **NEW SECTION. Section 12. Termination.** [Sections 4 and 6] terminate September 30, 1999.

14

-END-

SENATE BILL NO. 34
INTRODUCED BY SWYSGOOD
BY REQUEST OF THE DEPARTMENT OF JUSTICE

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS PERTAINING TO COMMERCIAL
6 MOTOR VEHICLES; REVISING DEFINITIONS; CREATING A THIRD-PARTY COMMERCIAL DRIVER TESTING
7 PROGRAM; WAIVING DRIVING TESTS FOR A QUALIFIED APPLICANT WORKING IN A FARM-RELATED
8 SERVICE INDUSTRY AND MEETING THE REQUIREMENTS FOR A SEASONAL COMMERCIAL DRIVER'S
9 LICENSE; REQUIRING COMMERCIAL DRIVERS HAVING ANY MEASURABLE OR DETECTABLE ALCOHOL
10 CONCENTRATION TO SUBMIT TO TESTING; CLARIFYING THE STATUS OF CERTAIN FERTILIZER
11 SPREADER TRUCKS AND SPREADER TRAILERS AS COMMERCIAL MOTOR VEHICLES; AMENDING
12 SECTIONS 61-1-134, 61-1-502, 61-5-104, 61-5-110, 61-5-117, 61-8-806, AND 61-8-808, MCA; AND
13 PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

STATEMENT OF INTENT

16 A statement of intent is required for this bill to provide guidelines for the adoption of rules under
17 61-5-117 by which the department of justice may certify and monitor a third-party commercial driver testing
18 program. The rules should set forth procedures to ensure that the testing is conducted according to
19 uniform standards and by competent examiners. The rules may limit the number of participants or delay
20 participation in a third-party testing program to ensure that it can be administered without having to add
21 additional full-time employees to the department.

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

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.



1

SENATE BILL NO. 34

2

INTRODUCED BY SWYSGOOD

3

BY REQUEST OF THE DEPARTMENT OF JUSTICE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS PERTAINING TO COMMERCIAL
6 MOTORVEHICLES; REVISING DEFINITIONS; CREATING A THIRD-PARTY COMMERCIAL DRIVER TESTING
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21 participation in a third-party testing program to ensure that it can be administered without having to add
additional full-time employees to the department.

22

23

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

24

25

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

26

27 **"61-1-134. Commercial motor vehicle defined -- exceptions.** (1) "Commercial Except as provided
in subsection (2), "commercial motor vehicle" means a motor vehicle used to transport passengers or
28 property if the vehicle:

29

(a) has a gross vehicle weight or manufacturer's rated capacity of 26,001 pounds or more;

30

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

(2) Commercial The following vehicles are not commercial motor vehicles under this section do not include vehicles operated within the state of Montana that are:

5 (a) registered as paying the 35% gross weight fee under 61-10-206;

6 ~~to~~ a vehicle exempt from taxation, used for firefighting, and ~~that are~~ bearing Montana tax-exempt
7 plates; ~~or~~

8 ~~to (b) a police emergency response and safety education units. vehicle; or~~

9 (c) a vehicle:

10 (i) controlled and

(3) Vehicles that are operated within the state of Montana by farmers or persons a farmer or person employed by farmers who are transporting a farmer;

13 (ii) used to transport farm products, farm machinery, or farm supplies and that are operated within
14 ~~Montana or within 150 miles of the farm headquarters are not considered commercial motor vehicles under~~
15 ~~this section;~~ and

16 (iii) not used to transport goods for compensation or hire.

17 (3) For purposes of this section, "farmer" means a person who operates a farm or who is directly
18 involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control
19 of that person."

20

21 **Section 2.** Section 61-1-502, MCA, is amended to read:

22 "61-1-502. Gross vehicle weight. "Gross vehicle weight" means the weight of a vehicle without
23 load plus the weight of any load ~~thereon~~ on the vehicle."

24

25 **Section 3. Section 61-5-104, MCA, is amended to read:**

26 "61-5-104. **Exemptions.** (1) The following persons are exempt from licensee licensure under this
27 chapter:

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

30 (b) a person who is a member of the armed forces of the United States on active duty in Montana;



1 who holds a valid license issued by another state and the spouse of ~~such a~~ the person who holds a valid
2 license issued by another state and who is not employed in Montana, except as a member of the armed
3 forces; ~~if~~ If a spouse of a member of the armed forces becomes gainfully employed in Montana, the
4 spouse must be licensed, as required by 61-5-102, within 90 days of becoming ~~so~~ employed.

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

8 (d) a person while driving or operating any road machine, farm tractor, or implement of husbandry
9 temporarily operated or moved on a highway;

10 (e) a person who is a locomotive engineer, assistant engineer, conductor, brakeman, railroad utility
11 person, or other member of the crew of a railroad locomotive or train being operated upon rails, including
12 operation on a railroad crossing a public street, road, or highway. A person employed as described in this
13 subsection is not required to display a driver's license to a law enforcement officer in connection with the
14 operation of a railroad locomotive or train within Montana.

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

18 (3) A nonresident ~~who is at least 18 years of age not otherwise exempt from the licensing~~
19 requirements of 49 CFR, part 391, and ~~who has~~ in his immediate possession of a valid commercial
20 operator's driver's license issued to him in his the nonresident by the nonresident's home state or country
21 may operate a ~~motor vehicle~~ or commercial motor vehicle in this state ~~subject to the age limits applicable~~
22 ~~to commercial vehicle operators in this state~~.

23 (4) A nonresident who is at least 18 years of age, whose home state or country does not require
24 the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than
25 90 days in any calendar year, if the motor vehicle ~~so operated~~ is duly registered in the home state or
26 country of ~~such~~ the nonresident.

27 (5) A driver's license issued under this chapter to any person who enters the United States armed
28 forces, if valid and in ~~force and effect~~ at the time ~~that~~ the person enters the service, continues in ~~full~~ ~~force~~
29 ~~and effect~~ so long as the service continues, unless the license is sooner suspended, revoked, or canceled
30 for a cause as provided by law, and for not to exceed 30 days following the date on which ~~holder of the~~

1 ~~driver's license the licensee~~ is honorably separated from the service. During the 30-day period, the license
2 is valid only when ~~in the immediate possession of the licensee while driving and the licensee has his the~~
3 ~~license and the licensee's~~ discharge, separation, leave, or furlough papers ~~are~~ in ~~his the licensee's~~
4 immediate possession."

5

6 **Section 4.** Section 61-5-110, MCA, is amended to read:

7 **"61-5-110. (Temporary) Examination of applicants.** (1) The department shall examine ~~every each~~
8 applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section.
9 The examination must include a test of the applicant's eyesight, ~~a knowledge test examining~~ the applicant's
10 ability to read and understand highway signs, ~~regulating, warning, and directing traffic, the applicant's the~~
11 ~~applicant's~~ knowledge of the traffic laws of this state, and ~~must include an actual demonstration of, except~~
12 ~~as provided in [section 6], a road test or a skills test demonstrating the applicant's ability to exercise~~
13 ordinary and reasonable control in the operation of a motor vehicle, quadricycle, or motorcycle. The
14 examination for the commercial driver's license may include additional items. ~~The knowledge test and the~~
15 ~~road test or the skills test must be waived for an applicant who works in a farm-related service industry and~~
16 ~~who otherwise meets the requirements for a seasonal commercial driver's license as set forth in this title~~
17 ~~and rules adopted by the department.~~

18 ~~(2) Within 90 days of receipt of an application for a commercial driver's license, the department~~
19 ~~shall give an examination to the applicant in the county where the applicant resides.~~

20 ~~(3) Except as otherwise provided by law, a resident who has a valid driver's license issued by~~
21 ~~another state may surrender that license for a Montana license of the same class, type, and endorsement~~
22 ~~upon payment of the required fees. A resident who obtains a Montana driver's license in this manner is~~
23 ~~exempt from the written examination and actual demonstration of the operation of a motor vehicle~~
24 ~~knowledge test and the road test or the skills test provided for in subsection (1) but is not exempt from the~~
25 ~~eyesight test or, in the case of commercial drivers, any examination required by federal regulations."~~

26

27 **Section 5.** Section 61-5-110, MCA, is amended to read:

28 **"61-5-110. (Effective October 1, 1999) Examination of applicants.** (1) The department shall
29 examine ~~every each~~ applicant for a driver's license or motorcycle endorsement, except as otherwise
30 provided in this section. The examination must include a test of the applicant's eyesight, a knowledge test

1 examining the applicant's ability to read and understand highway signs, regulating, warning, and directing
2 traffic, the applicant's the applicant's knowledge of the traffic laws of this state, and must include an actual
3 demonstration of a road test or a skills test demonstrating the applicant's ability to exercise ordinary and
4 reasonable control in the operation of a motor vehicle, quadricycle, or motorcycle. The examination for the
5 commercial driver's license may include additional items. The knowledge test and the road test or the skills
6 test must be waived for an applicant who works in a farm-related service industry and who otherwise meets
7 the requirements for a seasonal commercial driver's license as set forth in this title and rules adopted by
8 the department.

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16 ~~eyesight test or, in the case of commercial drivers, any examination required by federal regulations."~~

17

18 **NEW SECTION. Section 6. (Temporary) Third-party commercial driver testing program -- test**
19 **waiver.** (1) The department may certify as a third-party commercial driver testing program any company
20 that:

21 (a) in the course of its commercial enterprise, customarily transports or hauls any goods, including
22 agricultural commodities, in company-owned class A commercial motor vehicles as prescribed by federal
23 regulations;

24 (b) regularly and continuously employs a minimum number of drivers. The department shall
25 determine the minimum number of drivers and whether they are regularly and continuously employed by
26 the company.

27 (c) has a permanent Montana mailing address and maintains a place of business in this state that
28 includes at least one permanent, regularly occupied structure with facilities and equipment to conduct
29 offstreet skills testing;

30 (d) employs at least one examiner with qualifications required by rules of the department; and

(e) complies with rules adopted by the department under 61-5-117.

(2) The road test or the skills test required by 61-5-110 may be waived by the department for a commercial driver's license applicant upon certification of the applicant's successful completion of the road test or the skills test by a certified third-party commercial driver testing program.

5 (3) An examiner for a certified third-party commercial driver testing program may administer a road
6 test or a skills test only to a company employee who has applied to the department for a commercial
7 driver's license and who has passed the knowledge test required by 61-5-110 and by department or federal
8 rules.

9

11 "61-5-117. Rulemaking authority. The department may adopt rules to implement the issuance and
12 enforcement of classified commercial driver's licenses and shall adopt rules implementing [section 6]."

13

14 Section 8. Section 61-8-806, MCA, is amended to read:

15 61-8-806. Blood, breath, or urine tests of commercial vehicle operators -- procedure -- suspension.

16 (1) A person who operates a commercial motor vehicle upon the ways of this state open to the public is
17 considered to have given consent, subject to the provisions of 61-8-401 and 61-8-805, to a test of the
18 operator's blood, breath, or urine for the purpose of determining any measured or detectable amount of
19 alcohol in the operator's body if the operator is requested to submit to the test by a peace officer having
20 reasonable grounds to believe the person to have been driving or in actual physical control of a commercial
21 motor vehicle upon the ways of this state open to the public while ~~the person's blood~~ having any
22 measurable or detectable alcohol concentration ~~was 0.04 or more~~. The peace officer may designate a
23 blood, breath, or urine test to be administered.

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

1 commercial motor vehicle upon ways of this state open to the public while having ~~an~~ any measurable or
2 detectable alcohol concentration ~~of 0.04 or more~~ and that the person had refused to submit to the test
3 upon the request of the officer. Upon receipt of the report, the department shall suspend the license for
4 a period provided in subsection (5).

5 (4) Upon seizure of a resident's commercial driver's license, the peace officer shall issue, on behalf
6 of the department, a temporary noncommercial driving permit. The temporary driving permit is valid for
7 72 hours after issuance.

8 (5) If a commercial motor vehicle operator refuses to submit to a test as provided in subsection (3),
9 the department shall suspend the operator's commercial driver's license:

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

13 (b) upon a second or subsequent refusal at any time as determined from the records of the
14 department, for life, with no provision for a restricted probationary license or endorsement unless allowed
15 by federal rules governing commercial drivers.

16 (6) A nonresident commercial motor vehicle operator who refuses to submit to a test as provided
17 in subsection (3) is subject to suspension by the department as provided in subsection (5) and must be
18 given a temporary driving permit as provided in subsection (4)."

19

20 Section 9. Section 61-8-808, MCA, is amended to read:

21 **"61-8-808. Right of appeal ~~of~~ to court.** The department shall immediately notify in writing any
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