

SENATE BILL NO. 81

INTRODUCED BY SWYSGOOD

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS PERTAINING TO THE LICENSING AND OPERATION OF COMMERCIAL MOTOR VEHICLES; CLARIFYING THE DEFINITION OF "MOTOR VEHICLE"; AMENDING THE DEFINITION OF "COMMERCIAL MOTOR VEHICLE" TO INCLUDE COMBINATION VEHICLES WITH TOWED UNITS RATED GREATER THAN 10,000 POUNDS; EXCLUDING FROM LICENSURE CERTAIN VEHICLES OPERATED IN INTRASTATE COMMERCE; ALLOWING RELEASE OF ACCIDENT REPORTS TO GOVERNMENTAL AGENCIES FOR MOTOR CARRIER SAFETY MONITORING AND ROADWAY DESIGN PURPOSES; CLARIFYING LICENSE SUSPENSION FOR SERIOUS TRAFFIC VIOLATIONS; REVISING PROCEDURAL ASPECTS OF COMMERCIAL MOTOR VEHICLE IMPLIED CONSENT AND 0.04 ALCOHOL CONCENTRATION STATUTES; INCREASING THE LICENSE SUSPENSION PERIOD FOR SECOND OR SUBSEQUENT VIOLATIONS OF OUT-OF-SERVICE ORDERS; AND AMENDING SECTIONS 61-1-102, 61-1-134, 61-5-104, 61-7-114, 61-8-803, 61-8-805, 61-8-806, 61-8-808, AND 61-8-812, MCA."

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

Section 1. Section 61-1-102, MCA, is amended to read:

"61-1-102. Motor vehicle. "Motor vehicle" means a vehicle propelled by its own power and designed ~~primarily or used~~ to transport persons or property upon the highways of the state, ~~except that for~~. For the purpose of chapter 3, the term also includes trailers, semitrailers, and housetrailers. For the purpose of chapter 3, parts 1 and 2, the term also includes campers. The term does not include a bicycle as defined in 61-1-123."

Section 2. Section 61-1-134, MCA, is amended to read:

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

1 (a) has a gross combination weight rating or, in the absence of a gross combination weight rating,
 2 a declared weight of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating
 3 of more than 10,000 pounds;

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

5 ~~(c)~~ is designed or used to transport ~~more than 15~~ 16 passengers or more, including the driver;

6 ~~(d)~~ is a school bus as defined in 20-10-101; or

7 ~~(e)~~ is of any size and is used to transport any quantity or form of hazardous material required
 8 to be placarded pursuant to Title 49, Code of Federal Regulations.

9 (2) The following vehicles are not commercial motor vehicles:

10 (a) a vehicle exempt from taxation, used for firefighting, and bearing Montana tax-exempt plates;

11 (b) a police emergency response vehicle; or

12 (c) a vehicle:

13 (i) controlled and operated by a farmer or person employed by a farmer;

14 (ii) used to transport farm products, farm machinery, or farm supplies within Montana or within 150
 15 miles of the farm headquarters; 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 3.** Section 61-5-104, MCA, is amended to read:

22 "**61-5-104. Exemptions.** (1) The following persons are exempt from licensure under this chapter:

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

25 (b) a person who is a member of the armed forces of the United States on active duty in Montana
 26 who holds a valid license issued by another state and the spouse of the person who holds a valid license
 27 issued by another state and who is not employed in Montana, except as a member of the armed forces.
 28 If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be
 29 licensed, as required by 61-5-102, within 90 days of becoming employed.

30 (c) a person on active duty in the armed forces of the United States and in immediate possession

1 of a valid license issued to that person in a foreign country by the armed forces of the United States, for
 2 a period of 45 days from the date of the person's return to the United States;

3 (d) a person ~~while driving or operating any~~ who temporarily drives, operates, or moves a road
 4 machine, farm tractor, or implement of husbandry temporarily operated or moved for use in intrastate
 5 commerce on a highway;

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

11 (2) A nonresident who is at least 15 years of age and who is in immediate possession of a valid
 12 operator's license issued to the nonresident by the nonresident's home state or country may operate a
 13 motor vehicle, except a commercial motor vehicle, in this state.

14 (3) A nonresident not otherwise exempt from the licensing requirements of 49 CFR, part ~~391~~ 383,
 15 and in immediate possession of a valid commercial driver's license issued to the nonresident by the
 16 nonresident's home state or country may operate a commercial motor vehicle in this state.

17 (4) A nonresident who is at least 18 years of age, whose home state or country does not require
 18 the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than
 19 90 days in any calendar year, if the motor vehicle is registered in the home state or country of the
 20 nonresident.

21 (5) A driver's license issued under this chapter to ~~any~~ a person who enters the United States armed
 22 forces, if valid and in effect at the time that the person enters the service, continues in effect so long as
 23 the service continues, unless the license is ~~severely~~ suspended, revoked, or canceled for a cause as provided
 24 by law, and for ~~not up to exceed~~ up to 30 days following the date on which the licensee is honorably separated
 25 from the service. During the 30-day period, the license is valid only when the license and the licensee's
 26 discharge, separation, leave, or furlough papers are in the licensee's immediate possession."
 27

28 **Section 4.** Section 61-7-114, MCA, is amended to read:

29 **"61-7-114. Accident reports confidential.** (1) All required accident reports and supplemental
 30 reports ~~shall~~ must be without prejudice to the individual reporting and ~~shall~~ must be for the confidential use

1 of the department or other ~~state governmental~~ agencies ~~having use for the records~~ for accident prevention,
 2 roadway design, motor carrier safety monitoring purposes, or for the administration of the laws of this state
 3 relating to the deposit of security and proof of financial responsibility by persons driving or the owners of
 4 motor vehicles. The department may disclose the identity of a person involved in an accident when ~~such~~
 5 the identity is not otherwise known or when such the person denies his presence being present at the
 6 accident.

7 (2) Except as provided in this section, all accident reports and supplemental information filed as
 8 required by this part ~~shall be~~ are confidential and not open to general public inspection, ~~nor shall copying.~~
 9 Copying of lists of ~~such~~ reports ~~be~~ is not permitted. The report and supplemental information filed by law
 10 enforcement personnel, as required by this part, may be examined and copied, without obtaining a court
 11 order, by:

- 12 (a) ~~any a~~ person named in the report ~~or reports or by any;~~
 13 (b) a driver, passenger, or pedestrian involved in the accident; ~~or by his~~
 14 (c) the representative of the person, driver, passenger, or pedestrian designated in writing, ~~by;~~
 15 (d) a party to a civil action arising from the accident; or
 16 (e) ~~if the person is deceased, by his~~ the executor or administrator or by the attorney representing
 17 his the executor or administrator if the person is deceased."

18

19 **Section 5.** Section 61-8-803, MCA, is amended to read:

20 "**61-8-803. Suspension of commercial driver's license -- serious traffic violations.** (1) If a
 21 ~~commercial motor vehicle operator's record shows that the operator~~ the department receives notice from
 22 a court or another licensing jurisdiction that a person holding a commercial driver's license has been
 23 convicted of a more than one serious traffic violation ~~as defined in federal regulations in separate incidents~~
 24 within a 3-year period, the department shall suspend the person's commercial driver's license:

25 (1)(a) for 60 days ~~if the operator was convicted of two hazardous moving violations within 3 years~~
 26 upon receipt of notice of the second conviction; or

27 (1)(b) for 120 days ~~if the operator was convicted of three hazardous moving violations within 3~~
 28 years upon receipt of notice of the third or subsequent conviction.

29 (2) For purposes of this section, "serious traffic violation" means conviction, when operating a
 30 commercial motor vehicle, of:

1 (a) speeding in excess of 15 miles an hour above a posted speed limit;

2 (b) reckless driving;

3 (c) improper or erratic traffic lane changes;

4 (d) following too closely; or

5 (e) a violation of a state law or local ordinance relating to the operation of a motor vehicle,
6 excluding a parking, weight, or equipment violation, that arises in connection with a fatal accident."

7
8 **Section 6.** Section 61-8-805, MCA, is amended to read:

9 **"61-8-805. Suspension for operating a commercial vehicle with alcohol concentration of 0.04 or**
10 **more -- hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in
11 actual physical control of a commercial motor vehicle is subject to the suspension of the person's
12 commercial driver's license. ~~If the department receives a sworn report from a peace officer that the person~~
13 ~~was operating a commercial motor vehicle while the person's alcohol concentration was 0.04 or more, the~~
14 ~~department shall suspend the person's commercial driver's license~~ The peace officer who determines that
15 the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more shall
16 immediately seize the person's commercial driver's license and, on behalf of the department, give the
17 person written notice of the license suspension and the right to a hearing under 61-8-808. Upon receipt
18 of a certified report from the peace officer that the person was operating a commercial motor vehicle with
19 an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for
20 a restricted probationary commercial license, for:

21 (a) ~~for 1 year, with no provision for a restricted probationary license or endorsement,~~ upon receipt
22 of the first report of a 0.04 or more alcohol concentration violation, except that if the ~~offense~~ violation
23 occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension must
24 be for 3 years; and

25 (b) ~~for life, with no provision for a restricted probationary license or endorsement,~~ upon receipt of
26 a second or subsequent 0.04 or more alcohol concentration violation report at any time as determined from
27 the records of the department, ~~unless a restricted license or endorsement is allowed by federal rules~~
28 ~~governing commercial drivers~~ subject to federal rules allowing for driver rehabilitation and license
29 reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

30 (2) A peace officer who determines that a commercial motor vehicle operator has ~~any~~ a measured

1 amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle
 2 shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24
 3 hours.

4 (3) The fact that ~~any~~ a person charged with a violation of the provisions of subsection (1) is
 5 entitled to use alcohol under the laws of Montana is not a defense against ~~any~~ a charge of violating the
 6 provisions of subsection (1).

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

17

18 **Section 7.** Section 61-8-806, MCA, is amended to read:

19 **"61-8-806. Blood, breath, or urine tests of commercial vehicle operators -- procedure --**
 20 **suspension.** (1) A person who operates a commercial motor vehicle upon the ways of this state open to
 21 the public is considered to have given consent, ~~subject to the provisions of 61-8-401 and 61-8-806,~~ to a
 22 test of the ~~operator's~~ person's blood, breath, or urine for the purpose of determining ~~any~~ a measured ~~or~~
 23 ~~detected~~ amount or detected presence of alcohol in the ~~operator's~~ person's body if the ~~operator~~ person is
 24 requested to submit to the test by a peace officer ~~having~~ who has reasonable grounds to believe that the
 25 person ~~to have been~~ was driving or in actual physical control of a commercial motor vehicle upon the ways
 26 of this state open to the public while having ~~any measurable or detectable~~ a measured alcohol concentration
 27 or detected presence of alcohol. The peace officer may designate a blood, breath, or urine test to be
 28 administered and may request that the person submit to a preliminary alcohol screening test before a blood,
 29 breath, or urine test is taken.

30 (2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have

1 withdrawn the consent provided in subsection (1).

2 (3) If a ~~commercial motor vehicle operator who is a resident of Montana~~ person refuses upon the
3 request of a peace officer to submit to a test designated by the officer as ~~provided in subsection (1)~~, the
4 test may not be given. ~~On behalf of the department,~~ but the officer shall immediately seize the person's
5 commercial driver's license and forward the license to the department, along with a ~~sworn~~ report certified
6 under penalty of law that the officer had reasonable grounds to believe that the person ~~had been~~ was
7 driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the
8 public while having ~~any a measurable or detectable~~ alcohol concentration or detected presence of alcohol
9 and that the person had refused to submit to the test upon the request of the officer. Upon receipt of the
10 report, the department shall suspend the license for a period provided in subsection (5).

11 (4) Upon seizure of a ~~resident's~~ person's commercial driver's license, the peace officer shall issue,
12 on behalf of the department, a temporary 5-day noncommercial driving permit. ~~The temporary driving permit~~
13 ~~is valid for 72 hours after issuance, effective 12 hours after the time of issuance, and shall provide the~~
14 person with written notice of the license suspension and the right to a hearing under 61-8-808.

15 (5) ~~If a commercial motor vehicle operator refuses to submit to a test as provided in subsection (3),~~
16 ~~the department shall suspend the operator's commercial driver's license~~ Upon receipt of the officer's
17 certified report, the department shall suspend the person's commercial driver's license, with no provision
18 for a restricted probationary commercial driver's license, for:

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

22 (b) life, upon a second or subsequent refusal at any time as determined from the records of the
23 department, ~~for life, with no provision for a restricted probationary license or endorsement unless allowed~~
24 ~~by federal rules governing commercial drivers~~ subject to federal rules allowing for driver rehabilitation and
25 license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

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

29
30 **Section 8.** Section 61-8-808, MCA, is amended to read:

1 **"61-8-808. Right of appeal to court.** ~~(1) The department shall immediately notify in writing any~~
 2 ~~person whose commercial driver's license has been suspended under the provisions of 61-8-806, and the~~
 3 ~~person may, within~~ Within 30 days after receipt of notification notice of the suspension and the right to
 4 a hearing has been given by the peace officer under 61-8-805 or 61-8-806, the person may file a petition
 5 ~~for a hearing on the matter in the district court in the county where the person resides or to challenge the~~
 6 suspension in the district court in the county where the finding of 0.04 or more alcohol concentration or
 7 refusal was made.

8 (2) The court has jurisdiction and shall set the matter for hearing upon. The court shall give at least
 9 10 days' written notice to the county attorney of the county where the appeal is filed. The county attorney
 10 shall represent the state.

11 (3) The court shall take testimony and examine the facts of the case, except that:

12 (a) with regard to a suspension under 61-8-805, the issue is limited to whether the person was
 13 driving or had actual physical control of a commercial motor vehicle while the person's alcohol
 14 concentration was 0.04 or more; and

15 (b) with regard to a suspension under 61-8-806, the issues are limited to whether a peace officer
 16 had reasonable grounds to believe that the person had been driving or was in actual physical control of a
 17 commercial motor vehicle upon ways of this state open to the public while the person had any a measurable
 18 or detectable alcohol concentration, whether the person was ordered to submit to a test, and whether the
 19 person refused to submit to the test.

20 (4) The court shall determine whether the petitioner is entitled to a commercial driver's license or
 21 is subject to suspension as provided in this part."

22
 23 **Section 9.** Section 61-8-812, MCA, is amended to read:

24 **"61-8-812. Suspension of commercial driver's license -- operation of out-of-service vehicle.** (1)
 25 Upon receipt of ~~information that a commercial motor vehicle operator~~ notice from a court of competent
 26 jurisdiction or another licensing jurisdiction that a person holding a commercial driver's license has been
 27 convicted of a violation of operating a commercial motor vehicle that has been placed violating an out of
 28 service out-of-service order, the department shall suspend the operator's person's commercial driver's
 29 license for:

30 (a) 6 months for a first conviction and for;

1 (b) 1 year for a second ~~or subsequent~~ conviction if the vehicle being operated by the person at the
2 time of the violation was not transporting placardable hazardous materials or was not designed or being
3 used to transport more than 15 passengers, inclusive of the driver; and

4 (c) 3 years:

5 (i) for a second conviction if the vehicle:

6 (A) being operated at the time of the violation was transporting placardable hazardous materials;

7 or

8 (B) was designed or being used to transport more than 15 passengers, inclusive of the driver; and

9 (ii) for a third or subsequent conviction.

10 (2) For purposes of this section, an offender is considered to have been previously convicted if less
11 than 10 years have elapsed between the commission of the present offense and a previous conviction.

12 (3) A temporary or probationary commercial driver's license may not be issued while a commercial
13 driver's license is suspended under subsection (1)."

14 -END-

APPROVED BY COM ON
HIGHWAYS & TRANSPORTATION

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7 "MOTOR VEHICLE"; AMENDING THE DEFINITION OF "COMMERCIAL MOTOR VEHICLE" TO INCLUDE
8 COMBINATION VEHICLES WITH TOWED UNITS RATED GREATER THAN 10,000 POUNDS; EXCLUDING
9 FROM LICENSURE CERTAIN VEHICLES OPERATED IN INTRASTATE COMMERCE; ALLOWING RELEASE
10 OF ACCIDENT REPORTS TO GOVERNMENTAL AGENCIES FOR MOTOR CARRIER SAFETY MONITORING
11 AND ROADWAY DESIGN PURPOSES; ALLOWING RELEASE OF AN ACCIDENT REPORT TO THE
12 INSURANCE CARRIER OF A PERSON NAMED IN THE REPORT; CLARIFYING LICENSE SUSPENSION FOR
13 SERIOUS TRAFFIC VIOLATIONS; REVISING PROCEDURAL ASPECTS OF COMMERCIAL MOTOR VEHICLE
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24 For the purpose of chapter 3, the term also includes trailers, semitrailers, and housetrailers. For the purpose
25 of chapter 3, parts 1 and 2, the term also includes campers. The term does not include a bicycle as defined
26 in 61-1-123."

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2 (a) has a gross combination weight rating or, in the absence of a gross combination weight rating,
3 a declared weight of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating
4 of more than 10,000 pounds;

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

6 ~~(b)~~(c) is designed or used to transport ~~more than 15~~ 16 passengers or more, including the driver;

7 ~~(e)~~(d) is a school bus as defined in 20-10-101; or

8 ~~(d)~~(e) is of any size and is used to transport any quantity or form of hazardous material required
9 to be placarded pursuant to Title 49, Code of Federal Regulations.

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11 (a) a vehicle exempt from taxation, used for firefighting, and bearing Montana tax-exempt plates;

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13 (c) a vehicle:

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15 (ii) used to transport farm products, farm machinery, or farm supplies within Montana or within 150
16 miles of the farm headquarters; and

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

26 (b) a person who is a member of the armed forces of the United States on active duty in Montana
27 who holds a valid license issued by another state and the spouse of the person who holds a valid license
28 issued by another state and who is not employed in Montana, except as a member of the armed forces.

29 If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be
30 licensed, as required by 61-5-102, within 90 days of becoming employed.

1 (c) a person on active duty in the armed forces of the United States and in immediate possession
 2 of a valid license issued to that person in a foreign country by the armed forces of the United States, for
 3 a period of 45 days from the date of the person's return to the United States;

4 (d) a person ~~while driving or operating any~~ who temporarily drives, operates, or moves a road
 5 machine, farm tractor, or implement of husbandry ~~temporarily operated or moved~~ for use in intrastate
 6 commerce on a highway;

7 (e) a person who is a locomotive engineer, assistant engineer, conductor, brakeman, railroad utility
 8 person, or other member of the crew of a railroad locomotive or train being operated upon rails, including
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 24 the service continues, unless the license is ~~severely~~ suspended, revoked, or canceled for a cause as provided
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 4 relating to the deposit of security and proof of financial responsibility by persons driving or the owners of
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 6 the identity is not otherwise known or when ~~such~~ the person denies ~~his presence~~ being present at the
 7 accident.

8 (2) Except as provided in this section, all accident reports and supplemental information filed as
 9 required by this part ~~shall be~~ are confidential and not open to general public inspection, ~~nor shall copying.~~
 10 Copying of lists of ~~such~~ reports ~~be~~ is not permitted. The report and supplemental information filed by law
 11 enforcement personnel, as required by this part, may be examined and copied, without obtaining a court
 12 order, by:

13 (a) ~~any~~ a person named in the report ~~or reports or by any;~~

14 (b) a driver, passenger, or pedestrian involved in the accident; ~~or by his~~

15 (c) the representative of the person OR THE PERSON'S INSURANCE CARRIER, driver, passenger,
 16 or pedestrian designated in writing, ~~by;~~

17 (d) a party to a civil action arising from the accident; ~~or~~

18 (e) ~~if the person is deceased, by his~~ the executor or administrator or by the attorney representing
 19 ~~his~~ the executor or administrator if the person is deceased."

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11 **"61-8-805. Suspension for operating a commercial vehicle with alcohol concentration of 0.04 or**
 12 **more -- hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in
 13 actual physical control of a commercial motor vehicle is subject to the suspension of the person's
 14 commercial driver's license. ~~If the department receives a sworn report from a peace officer that the person~~
 15 ~~was operating a commercial motor vehicle while the person's alcohol concentration was 0.04 or more, the~~
 16 ~~department shall suspend the person's commercial driver's license~~ The peace officer who determines that
 17 the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more shall
 18 immediately seize the person's commercial driver's license and, on behalf of the department, give the
 19 person written notice of the license suspension and the right to a hearing under 61-8-808. Upon receipt
 20 of a certified report from the peace officer that the person was operating a commercial motor vehicle with
 21 an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for
 22 a restricted probationary commercial license, for:

23 ~~(a) for 1 year, with no provision for a restricted probationary license or endorsement, upon receipt~~
 24 ~~of the first report of a 0.04 or more alcohol concentration violation, except that if the offense violation~~
 25 ~~occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension must~~
 26 ~~be for 3 years; and~~

27 ~~(b) for life, with no provision for a restricted probationary license or endorsement, upon receipt of~~
 28 ~~a second or subsequent 0.04 or more alcohol concentration violation report at any time as determined from~~
 29 ~~the records of the department, unless a restricted license or endorsement is allowed by federal rules~~
 30 ~~governing commercial drivers~~ subject to federal rules allowing for driver rehabilitation and license

1 reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

2 (2) A peace officer who determines that a commercial motor vehicle operator has ~~any a~~ measured
3 amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle
4 shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24
5 hours.

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

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

19

20 **Section 7.** Section 61-8-806, MCA, is amended to read:

21 **"61-8-806. Blood, breath, or urine tests of commercial vehicle operators -- procedure --**
22 **suspension.** (1) A person who operates a commercial (1) motor vehicle upon the ways of this state open to
23 the public is considered to have given consent, ~~subject to the provisions of 61-8-401 and 61-8-805,~~ to a
24 test of the ~~operator's~~ person's blood, breath, or urine for the purpose of determining ~~any a~~ measured ~~or~~
25 ~~detected~~ amount or detected presence of alcohol in the ~~operator's~~ person's body if the ~~operator~~ person is
26 requested to submit to the test by a peace officer ~~having~~ who has reasonable grounds to believe that the
27 person ~~to have been~~ was driving or in actual physical control of a commercial motor vehicle upon the ways
28 of this state open to the public while having ~~any measurable or detectable~~ a measured alcohol concentration
29 or detected presence of alcohol. The peace officer may designate a blood, breath, or urine test to be
30 administered and may request that the person submit to a preliminary alcohol screening test before a blood,

1 breath, or urine test is taken.

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

4 (3) If a ~~commercial motor vehicle operator who is a resident of Montana~~ person refuses ~~upon the~~
5 ~~request of a peace officer~~ to submit to a test designated by the officer ~~as provided in subsection (1)~~, the
6 test may not be given. ~~On behalf of the department,~~ but the officer shall immediately seize the person's
7 commercial driver's license and forward the license to the department, along with a ~~sworn~~ report certified
8 under penalty of law that the officer had reasonable grounds to believe that the person ~~had been~~ was
9 driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the
10 public while having ~~any a measurable or detectable~~ any a measurable or detectable alcohol concentration or detected presence of alcohol
11 and that the person had refused to submit to the test upon the request of the officer. Upon receipt of the
12 report, the department shall suspend the license for a period provided in subsection (5).

13 (4) Upon seizure of a ~~resident's~~ person's commercial driver's license, the peace officer shall issue,
14 on behalf of the department, a temporary 5-day noncommercial driving permit. ~~The temporary driving permit~~
15 ~~is valid for 72 hours after issuance, effective 12 hours after the time of issuance, and shall provide the~~
16 person with written notice of the license suspension and the right to a hearing under 61-8-808.

17 (5) ~~If a commercial motor vehicle operator refuses to submit to a test as provided in subsection (3),~~
18 ~~the department shall suspend the operator's commercial driver's license~~ Upon receipt of the officer's
19 certified report, the department shall suspend the person's commercial driver's license, with no provision
20 for a restricted probationary commercial driver's license, for:

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

24 (b) life, upon a second or subsequent refusal at any time as determined from the records of the
25 department, ~~for life, with no provision for a restricted probationary license or endorsement unless allowed~~
26 ~~by federal rules governing commercial drivers~~ subject to federal rules allowing for driver rehabilitation and
27 license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

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

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

2 **"61-8-808. Right of appeal to court.** ~~(1) The department shall immediately notify in writing any~~
3 ~~person whose commercial driver's license has been suspended under the provisions of 61-8-806, and the~~
4 ~~person may, within~~ Within 30 days after receipt of notification notice of the suspension and the right to
5 a hearing has been given by the peace officer under 61-8-805 or 61-8-806, the person may file a petition
6 for a hearing on the matter in the district court in the county where the person resides or to challenge the
7 suspension in the district court in the county where the finding of 0.04 or more alcohol concentration or
8 refusal was made.

9 (2) The court has jurisdiction and shall set the matter for hearing upon. The court shall give at least
10 10 days' written notice to the county attorney of the county where the appeal is filed. The county attorney
11 shall represent the state.

12 (3) The court shall take testimony and examine the facts of the case, except that:

13 (a) with regard to a suspension under 61-8-805, the issue is limited to whether the person was
14 driving or had actual physical control of a commercial motor vehicle while the person's alcohol
15 concentration was 0.04 or more; and

16 (b) with regard to a suspension under 61-8-806, the issues are limited to whether a peace officer
17 had reasonable grounds to believe that the person had been driving or was in actual physical control of a
18 commercial motor vehicle upon ways of this state open to the public while the person had any a measurable
19 or detectable alcohol concentration, whether the person was ordered to submit to a test, and whether the
20 person refused to submit to the test.

21 (4) The court shall determine whether the petitioner is entitled to a commercial driver's license or
22 is subject to suspension as provided in this part."

23

24 **Section 9.** Section 61-8-812, MCA, is amended to read:

25 **"61-8-812. Suspension of commercial driver's license -- operation of out-of-service vehicle.** (1)
26 Upon receipt of information that a commercial motor vehicle operator notice from a court of competent
27 jurisdiction or another licensing jurisdiction that a person holding a commercial driver's license has been
28 convicted of a violation of operating a commercial motor vehicle that has been placed violating an out-of
29 service out-of-service order, the department shall suspend the operator's person's commercial driver's
30 license for;

1 (a) 6 months for a first conviction ~~and for;~~
2 (b) 1 year for a second ~~or subsequent~~ conviction if the vehicle being operated by the person at the
3 time of the violation was not transporting placardable hazardous materials or was not designed or being
4 used to transport more than 15 passengers, inclusive of the driver; and
5 (c) 3 years:
6 (i) for a second conviction if the vehicle:
7 (A) being operated at the time of the violation was transporting placardable hazardous materials;
8 or
9 (B) was designed or being used to transport more than 15 passengers, inclusive of the driver; and
10 (ii) for a third or subsequent conviction.
11 (2) For purposes of this section, an offender is considered to have been previously convicted if less
12 than 10 years have elapsed between the commission of the present offense and a previous conviction.
13 (3) A temporary or probationary commercial driver’s license may not be issued while a commercial
14 driver’s license is suspended under subsection (1)."
15 -END-

1 SENATE BILL NO. 81

2 INTRODUCED BY SWYSGOOD

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS PERTAINING TO THE
6 LICENSING AND OPERATION OF COMMERCIAL MOTOR VEHICLES; CLARIFYING THE DEFINITION OF
7 "MOTOR VEHICLE"; AMENDING THE DEFINITION OF "COMMERCIAL MOTOR VEHICLE" TO INCLUDE
8 COMBINATION VEHICLES WITH TOWED UNITS RATED GREATER THAN 10,000 POUNDS; EXCLUDING
9 FROM LICENSURE CERTAIN VEHICLES OPERATED IN INTRASTATE COMMERCE; ALLOWING RELEASE
10 OF ACCIDENT REPORTS TO GOVERNMENTAL AGENCIES FOR MOTOR CARRIER SAFETY MONITORING
11 AND ROADWAY DESIGN PURPOSES; ALLOWING RELEASE OF AN ACCIDENT REPORT TO THE
12 INSURANCE CARRIER OF A PERSON NAMED IN THE REPORT; CLARIFYING LICENSE SUSPENSION FOR
13 SERIOUS TRAFFIC VIOLATIONS; REVISING PROCEDURAL ASPECTS OF COMMERCIAL MOTOR VEHICLE
14 IMPLIED CONSENT AND 0.04 ALCOHOL CONCENTRATION STATUTES; INCREASING THE LICENSE
15 SUSPENSION PERIOD FOR SECOND OR SUBSEQUENT VIOLATIONS OF OUT-OF-SERVICE ORDERS; AND
16 AMENDING SECTIONS 61-1-102, 61-1-134, 61-5-104, 61-7-114, 61-8-803, 61-8-805, 61-8-806,
17 61-8-808, AND 61-8-812, MCA."

18

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

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

1 SENATE BILL NO. 81

2 INTRODUCED BY SWYSGOOD

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS PERTAINING TO THE
6 LICENSING AND OPERATION OF COMMERCIAL MOTOR VEHICLES; CLARIFYING THE DEFINITION OF
7 "MOTOR VEHICLE"; AMENDING THE DEFINITION OF "COMMERCIAL MOTOR VEHICLE" TO INCLUDE
8 COMBINATION VEHICLES WITH TOWED UNITS RATED GREATER THAN 10,000 POUNDS; EXCLUDING
9 FROM LICENSURE CERTAIN VEHICLES OPERATED IN INTRASTATE COMMERCE; ALLOWING RELEASE
10 OF ACCIDENT REPORTS TO GOVERNMENTAL AGENCIES FOR MOTOR CARRIER SAFETY MONITORING
11 AND ROADWAY DESIGN PURPOSES; ALLOWING RELEASE OF AN ACCIDENT REPORT TO THE
12 INSURANCE CARRIER OF A PERSON NAMED IN THE REPORT; CLARIFYING LICENSE SUSPENSION FOR
13 SERIOUS TRAFFIC VIOLATIONS; REVISING PROCEDURAL ASPECTS OF COMMERCIAL MOTOR VEHICLE
14 IMPLIED CONSENT AND 0.04 ALCOHOL CONCENTRATION STATUTES; INCREASING THE LICENSE
15 SUSPENSION PERIOD FOR SECOND OR SUBSEQUENT VIOLATIONS OF OUT-OF-SERVICE ORDERS; AND
16 AMENDING SECTIONS 61-1-102, 61-1-134, 61-5-104, 61-7-114, 61-8-803, 61-8-805, 61-8-806,
17 61-8-808, AND 61-8-812, MCA."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
2021 **Section 1.** Section 61-1-102, MCA, is amended to read:

22 **"61-1-102. Motor vehicle.** "Motor vehicle" means a vehicle propelled by its own power and
23 designed primarily or used to transport persons or property upon the highways of the state, ~~except that for,~~
24 For the purpose of chapter 3, the term also includes trailers, semitrailers, and housetrailers. For the purpose
25 of chapter 3, parts 1 and 2, the term also includes campers. The term does not include a bicycle as defined
26 in 61-1-123."
27

28 **Section 2.** Section 61-1-134, MCA, is amended to read:

29 **"61-1-134. Commercial motor vehicle defined -- exceptions.** (1) Except as provided in subsection
30 (2), "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce

1 to transport passengers or property if the vehicle:

2 (a) has a gross combination weight rating or, in the absence of a gross combination weight rating,
3 a declared weight of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating
4 of more than 10,000 pounds;

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

6 ~~(b)(c)~~ is designed or used to transport ~~more than 15~~ 16 passengers or more, including the driver;

7 ~~(e)(d)~~ is a school bus as defined in 20-10-101; or

8 ~~(d)(e)~~ is of any size and is used to transport any quantity or form of hazardous material required
9 to be placarded pursuant to Title 49, Code of Federal Regulations.

10 (2) The following vehicles are not commercial motor vehicles:

11 (a) a vehicle exempt from taxation, used for firefighting, and bearing Montana tax-exempt plates;

12 (b) a police emergency response vehicle; or

13 (c) a vehicle:

14 (i) controlled and operated by a farmer or person employed by a farmer;

15 (ii) used to transport farm products, farm machinery, or farm supplies within Montana or within 150
16 miles of the farm headquarters; and

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

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

21

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

23 **"61-5-104. Exemptions.** (1) The following persons are exempt from licensure under this chapter:

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

26 (b) a person who is a member of the armed forces of the United States on active duty in Montana
27 who holds a valid license issued by another state and the spouse of the person who holds a valid license
28 issued by another state and who is not employed in Montana, except as a member of the armed forces.

29 If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be
30 licensed, as required by 61-5-102, within 90 days of becoming employed.

1 (c) a person on active duty in the armed forces of the United States and in immediate possession
 2 of a valid license issued to that person in a foreign country by the armed forces of the United States, for
 3 a period of 45 days from the date of the person's return to the United States;

4 (d) a person ~~while driving or operating any~~ who temporarily drives, operates, or moves a road
 5 machine, farm tractor, or implement of husbandry ~~temporarily operated or moved~~ for use in intrastate
 6 commerce on a highway;

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

12 (2) A nonresident who is at least 15 years of age and who is in immediate possession of a valid
 13 operator's license issued to the nonresident by the nonresident's home state or country may operate a
 14 motor vehicle, except a commercial motor vehicle, in this state.

15 (3) A nonresident not otherwise exempt from the licensing requirements of 49 CFR, part ~~394~~ 383,
 16 and in immediate possession of a valid commercial driver's license issued to the nonresident by the
 17 nonresident's home state or country may operate a commercial motor vehicle in this state.

18 (4) A nonresident who is at least 18 years of age, whose home state or country does not require
 19 the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than
 20 90 days in any calendar year, if the motor vehicle is registered in the home state or country of the
 21 nonresident.

22 (5) A driver's license issued under this chapter to ~~any~~ a person who enters the United States armed
 23 forces, if valid and in effect at the time that the person enters the service, continues in effect so long as
 24 the service continues, unless the license is ~~ever~~ suspended, revoked, or canceled for a cause as provided
 25 by law, and for ~~not up to~~ exceed 30 days following the date on which the licensee is honorably separated
 26 from the service. During the 30-day period, the license is valid only when the license and the licensee's
 27 discharge, separation, leave, or furlough papers are in the licensee's immediate possession."

28
 29 **Section 4.** Section 61-7-114, MCA, is amended to read:

30 **"61-7-114. Accident reports confidential.** (1) All required accident reports and supplemental

1 reports ~~shall~~ must be without prejudice to the individual reporting and ~~shall~~ must be for the confidential use
 2 of the department or other state governmental agencies having use for the records for accident prevention,
 3 roadway design, motor carrier safety monitoring purposes, or for the administration of the laws of this state
 4 relating to the deposit of security and proof of financial responsibility by persons driving or the owners of
 5 motor vehicles. The department may disclose the identity of a person involved in an accident when ~~such~~
 6 the identity is not otherwise known or when ~~such~~ the person denies ~~his presence~~ being present at the
 7 accident.

8 (2) Except as provided in this section, all accident reports and supplemental information filed as
 9 required by this part ~~shall be~~ are confidential and not open to general public inspection, ~~nor shall copying,~~
 10 Copying of lists of ~~such~~ reports ~~be~~ is not permitted. The report and supplemental information filed by law
 11 enforcement personnel, as required by this part, may be examined and copied, without obtaining a court
 12 order, by:

13 (a) ~~any~~ a person named in the report ~~or reports or by any~~ OR INVOLVED IN THE ACCIDENT;
 14 (b) ~~a driver, passenger, or pedestrian involved in the accident, or by his~~
 15 ~~the~~ the representative of the person OR THE PERSON'S INSURANCE CARRIER, driver, passenger,
 16 or pedestrian REFERRED TO IN SUBSECTION (2)(A), designated in writing, by, OR THE INSURANCE
 17 CARRIER OF THAT PERSON;

18 ~~(c)~~ (C) a party to a civil action arising from the accident; or
 19 ~~(d)~~ (D) ~~if the person is deceased, by his~~ the executor, ~~or~~ THE administrator, ~~or by the attorney~~
 20 representing ~~his~~ the executor or administrator if the person is deceased."

21
 22 **Section 5.** Section 61-8-803, MCA, is amended to read:

23 **"61-8-803. Suspension of commercial driver's license -- serious traffic violations.** (1) ~~If a~~
 24 ~~commercial motor vehicle operator's record shows that the operator~~ the department receives notice from
 25 a court or another licensing jurisdiction that a person holding a commercial driver's license has been
 26 convicted of a more than one serious traffic violation ~~as defined in federal regulations in separate incidents~~
 27 within a 3-year period, the department shall suspend the person's commercial driver's license:

28 (1)(a) ~~for 60 days if the operator was convicted of two hazardous moving violations within 3 years~~
 29 upon receipt of notice of the second conviction; or

30 (2)(b) ~~for 120 days if the operator was convicted of three hazardous moving violations within 3~~

1 ~~years~~ upon receipt of notice of the third or subsequent conviction.

2 (2) For purposes of this section, "serious traffic violation" means conviction, when operating a
3 commercial motor vehicle, of:

4 (a) speeding in excess of 15 miles an hour above a posted speed limit;

5 (b) reckless driving;

6 (c) improper or erratic traffic lane changes;

7 (d) following too closely; or

8 (e) a violation of a state law or local ordinance relating to the operation of a motor vehicle,
9 excluding a parking, weight, or equipment violation, that arises in connection with a fatal accident."

10

11 **Section 6.** Section 61-8-805, MCA, is amended to read:

12 **"61-8-805. Suspension for operating a commercial vehicle with alcohol concentration of 0.04 or**
13 **more -- hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in
14 actual physical control of a commercial motor vehicle is subject to the suspension of the person's
15 commercial driver's license. ~~If the department receives a sworn report from a peace officer that the person~~
16 ~~was operating a commercial motor vehicle while the person's alcohol concentration was 0.04 or more, the~~
17 ~~department shall suspend the person's commercial driver's license~~ The peace officer who determines that
18 the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more shall
19 immediately seize the person's commercial driver's license and, on behalf of the department, give the
20 person written notice of the license suspension and the right to a hearing under 61-8-808. Upon receipt
21 of a certified report from the peace officer that the person was operating a commercial motor vehicle with
22 an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for
23 a restricted probationary commercial license, for:

24 (a) for 1 year, with no provision for a restricted probationary license or endorsement, upon receipt
25 of the first report of a 0.04 or more alcohol concentration violation, except that if the offense violation
26 occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension must
27 be for 3 years; and

28 (b) for life, with no provision for a restricted probationary license or endorsement, upon receipt of
29 a second or subsequent 0.04 or more alcohol concentration violation report at any time as determined from
30 the records of the department, unless a restricted license or endorsement is allowed by federal rules

1 ~~governing commercial drivers~~ subject to federal rules allowing for driver rehabilitation and license
 2 reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

3 (2) A peace officer who determines that a commercial motor vehicle operator has ~~any~~ a measured
 4 amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle
 5 shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24
 6 hours.

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

10 ~~(4) The department shall immediately notify in writing any person whose commercial driver's~~
 11 ~~license is suspended under this section. The person may file a petition within 30 days after the notice is~~
 12 ~~given for a hearing in the matter in the district court in the county in which the finding of alcohol~~
 13 ~~concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days'~~
 14 ~~written notice to the county attorney of the county in which the appeal is filed. The county attorney shall~~
 15 ~~represent the state. The court shall take testimony and examine the facts of the case, except that the issue~~
 16 ~~is limited to whether the person was driving or had actual physical control of a commercial motor vehicle~~
 17 ~~while the person's alcohol concentration was 0.04 or more. The court shall determine whether the~~
 18 ~~petitioner is entitled to a commercial driver's license or is subject to suspension as provided in this section.~~
 19 ~~The provisions of 61-8-404 apply to any proceedings under this section."~~

20
 21 **Section 7.** Section 61-8-806, MCA, is amended to read:
 22 **"61-8-806. Blood, breath, or urine tests of commercial vehicle operators -- procedure --**
 23 **suspension.** (1) A person who operates a commercial motor vehicle upon the ways of this state open to
 24 the public is considered to have given consent, ~~subject to the provisions of 61-8-401 and 61-8-805,~~ to a
 25 test of the ~~operator's~~ person's blood, breath, or urine for the purpose of determining ~~any~~ a measured ~~or~~
 26 ~~detected~~ amount or detected presence of alcohol in the ~~operator's~~ person's body if the ~~operator~~ person is
 27 requested to submit to the test by a peace officer having who has reasonable grounds to believe that the
 28 person ~~to have been~~ was driving or in actual physical control of a commercial motor vehicle upon the ways
 29 of this state open to the public while having ~~any measurable or detectable~~ a measured alcohol concentration
 30 or detected presence of alcohol. The peace officer may designate a blood, breath, or urine test to be

1 administered and may request that the person submit to a preliminary alcohol screening test before a blood,
 2 breath, or urine test is taken.

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

5 (3) ~~If a commercial motor vehicle operator who is a resident of Montana~~ person ~~refuses upon the~~
 6 ~~request of a peace officer to submit to a test designated by the officer as provided in subsection (1), the~~
 7 ~~test may not be given. On behalf of the department, but~~ the officer shall immediately seize the person's
 8 commercial driver's license and forward the license to the department, along with a ~~sworn~~ certified
 9 under penalty of law that the officer had reasonable grounds to believe that the person ~~had been~~ was
 10 driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the
 11 public while having ~~any a~~ a measurable or detectable alcohol concentration or detected presence of alcohol
 12 and that the person had refused to submit to the test upon the request of the officer. Upon receipt of the
 13 report, the department shall suspend the license for a period provided in subsection (5).

14 (4) Upon seizure of a ~~resident's~~ person's commercial driver's license, the peace officer shall issue,
 15 on behalf of the department, a temporary 5-day noncommercial driving permit. ~~The temporary driving permit~~
 16 ~~is valid for 72 hours after issuance, effective 12 hours after the time of issuance, and shall provide the~~
 17 person with written notice of the license suspension and the right to a hearing under 61-8-808.

18 (5) ~~If a commercial motor vehicle operator refuses to submit to a test as provided in subsection (3),~~
 19 ~~the department shall suspend the operator's commercial driver's license~~ Upon receipt of the officer's
 20 certified report, the department shall suspend the person's commercial driver's license, with no provision
 21 for a restricted probationary commercial driver's license, for:

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

25 (b) life, upon a second or subsequent refusal at any time as determined from the records of the
 26 department, ~~for life, with no provision for a restricted probationary license or endorsement unless allowed~~
 27 ~~by federal rules governing commercial drivers~~ subject to federal rules allowing for driver rehabilitation and
 28 license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

29 (6) ~~A nonresident commercial motor vehicle operator who refuses to submit to a test as provided~~
 30 ~~in subsection (3) is subject to suspension by the department as provided in subsection (5) and must be~~

1 ~~given a temporary driving permit as provided in subsection (4)."~~

2

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

4 **"61-8-808. Right of appeal to court.** ~~(1) The department shall immediately notify in writing any~~
 5 ~~person whose commercial driver's license has been suspended under the provisions of 61-8-806, and the~~
 6 ~~person may, within~~ Within 30 days after receipt of notification notice of the suspension and the right to
 7 a hearing has been given by the peace officer under 61-8-805 or 61-8-806, the person may file a petition
 8 for a hearing on the matter in the district court in the county where the person resides or to challenge the
 9 suspension in the district court in the county where the finding of 0.04 or more alcohol concentration or
 10 refusal was made.

11 (2) The court has jurisdiction and shall set the matter for hearing upon. The court shall give at least
 12 10 days' written notice to the county attorney of the county where the appeal is filed. The county attorney
 13 shall represent the state.

14 (3) The court shall take testimony and examine the facts of the case, except that;

15 (a) with regard to a suspension under 61-8-805, the issue is limited to whether the person was
 16 driving or had actual physical control of a commercial motor vehicle while the person's alcohol
 17 concentration was 0.04 or more; and

18 (b) with regard to a suspension under 61-8-806, the issues are limited to whether a peace officer
 19 had reasonable grounds to believe that the person had been driving or was in actual physical control of a
 20 commercial motor vehicle upon ways of this state open to the public while the person had any a measurable
 21 or detectable alcohol concentration, whether the person was ordered to submit to a test, and whether the
 22 person refused to submit to the test.

23 (4) The court shall determine whether the petitioner is entitled to a commercial driver's license or
 24 is subject to suspension as provided in this part."

25

26 **Section 9.** Section 61-8-812, MCA, is amended to read:

27 **"61-8-812. Suspension of commercial driver's license -- operation of out-of-service vehicle.** (1)
 28 Upon receipt of information that a commercial motor vehicle operator notice from a court of competent
 29 jurisdiction or another licensing jurisdiction that a person holding a commercial driver's license has been
 30 convicted of a violation of operating a commercial motor vehicle that has been placed violating an out-of

1 ~~service~~ out-of-service order, the department shall suspend the ~~operator's~~ person's commercial driver's
2 license for:

3 (a) 6 months for a first conviction and for:

4 (b) 1 year for a second ~~or subsequent~~ conviction if the vehicle being operated by the person at the
5 time of the violation was not transporting placardable hazardous materials or was not designed or being
6 used to transport more than 15 passengers, inclusive of the driver; and

7 (c) 3 years:

8 (i) for a second conviction if the vehicle:

9 (A) being operated at the time of the violation was transporting placardable hazardous materials;

10 or

11 (B) was designed or being used to transport more than 15 passengers, inclusive of the driver; and

12 (ii) for a third or subsequent conviction.

13 (2) For purposes of this section, an offender is considered to have been previously convicted if less
14 than 10 years have elapsed between the commission of the present offense and a previous conviction.

15 (3) A temporary or probationary commercial driver's license may not be issued while a commercial
16 driver's license is suspended under subsection (1)."

17 -END-

1 SENATE BILL NO. 81

2 INTRODUCED BY SWYSGOOD

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS PERTAINING TO THE
6 LICENSING AND OPERATION OF COMMERCIAL MOTOR VEHICLES; CLARIFYING THE DEFINITION OF
7 "MOTOR VEHICLE"; AMENDING THE DEFINITION OF "COMMERCIAL MOTOR VEHICLE" TO INCLUDE
8 COMBINATION VEHICLES WITH TOWED UNITS RATED GREATER THAN 10,000 POUNDS; EXCLUDING
9 FROM LICENSURE CERTAIN VEHICLES OPERATED IN INTRASTATE COMMERCE; ALLOWING RELEASE
10 OF ACCIDENT REPORTS TO GOVERNMENTAL AGENCIES FOR MOTOR CARRIER SAFETY MONITORING
11 AND ROADWAY DESIGN PURPOSES; ALLOWING RELEASE OF AN ACCIDENT REPORT TO THE
12 INSURANCE CARRIER OF A PERSON NAMED IN THE REPORT; CLARIFYING LICENSE SUSPENSION FOR
13 SERIOUS TRAFFIC VIOLATIONS; REVISING PROCEDURAL ASPECTS OF COMMERCIAL MOTOR VEHICLE
14 IMPLIED CONSENT AND 0.04 ALCOHOL CONCENTRATION STATUTES; INCREASING THE LICENSE
15 SUSPENSION PERIOD FOR SECOND OR SUBSEQUENT VIOLATIONS OF OUT-OF-SERVICE ORDERS; AND
16 AMENDING SECTIONS 61-1-102, 61-1-134, 61-5-104, 61-7-114, 61-8-803, 61-8-805, 61-8-806,
17 61-8-808, AND 61-8-812, MCA."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
2021 **Section 1.** Section 61-1-102, MCA, is amended to read:

22 **"61-1-102. Motor vehicle.** "Motor vehicle" means a vehicle propelled by its own power and
23 designed ~~primarily or used~~ to transport persons or property upon the highways of the state, ~~except that for~~,
24 For the purpose of chapter 3, the term also includes trailers, semitrailers, and housetrailers. For the purpose
25 of chapter 3, parts 1 and 2, the term also includes campers. The term does not include a bicycle as defined
26 in 61-1-123."

27
28 **Section 2.** Section 61-1-134, MCA, is amended to read:

29 **"61-1-134. Commercial motor vehicle defined -- exceptions.** (1) Except as provided in subsection
30 (2), "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce

1 to transport passengers or property if the vehicle:

2 (a) has a gross combination weight rating or, in the absence of a gross combination weight rating,
3 a declared weight of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating
4 of more than 10,000 pounds;

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

6 ~~(b)(c)~~ (c) is designed or used to transport ~~more than 15~~ 16 passengers or more, including the driver;

7 ~~(c)(d)~~ (d) is a school bus as defined in 20-10-101; or

8 ~~(d)(e)~~ (e) is of any size and is used to transport any quantity or form of hazardous material required
9 to be placarded pursuant to Title 49, Code of Federal Regulations.

10 (2) The following vehicles are not commercial motor vehicles:

11 (a) a vehicle exempt from taxation, used for firefighting, and bearing Montana tax-exempt plates;

12 (b) a police emergency response vehicle; or

13 (c) a vehicle:

14 (i) controlled and operated by a farmer or person employed by a farmer;

15 (ii) used to transport farm products, farm machinery, or farm supplies within Montana or within 150
16 miles of the farm headquarters; and

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

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

21

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

23 **"61-5-104. Exemptions.** (1) The following persons are exempt from licensure under this chapter:

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

26 (b) a person who is a member of the armed forces of the United States on active duty in Montana
27 who holds a valid license issued by another state and the spouse of the person who holds a valid license
28 issued by another state and who is not employed in Montana, except as a member of the armed forces.

29 If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be
30 licensed, as required by 61-5-102, within 90 days of becoming employed.

1 (c) a person on active duty in the armed forces of the United States and in immediate possession
 2 of a valid license issued to that person in a foreign country by the armed forces of the United States, for
 3 a period of 45 days from the date of the person's return to the United States;

4 (d) a person ~~while driving or operating any~~ who temporarily drives, operates, or moves a road
 5 machine, farm tractor, or implement of husbandry temporarily operated or moved for use in intrastate
 6 commerce on a highway;

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

12 (2) A nonresident who is at least 15 years of age and who is in immediate possession of a valid
 13 operator's license issued to the nonresident by the nonresident's home state or country may operate a
 14 motor vehicle, except a commercial motor vehicle, in this state.

15 (3) A nonresident not otherwise exempt from the licensing requirements of 49 CFR, part ~~384~~ 383,
 16 and in immediate possession of a valid commercial driver's license issued to the nonresident by the
 17 nonresident's home state or country may operate a commercial motor vehicle in this state.

18 (4) A nonresident who is at least 18 years of age, whose home state or country does not require
 19 the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than
 20 90 days in any calendar year, if the motor vehicle is registered in the home state or country of the
 21 nonresident.

22 (5) A driver's license issued under this chapter to ~~any~~ a person who enters the United States armed
 23 forces, if valid and in effect at the time that the person enters the service, continues in effect so long as
 24 the service continues, unless the license is ~~either~~ suspended, revoked, or canceled for a cause as provided
 25 by law, and for ~~not up to~~ exceed 30 days following the date on which the licensee is honorably separated
 26 from the service. During the 30-day period, the license is valid only when the license and the licensee's
 27 discharge, separation, leave, or furlough papers are in the licensee's immediate possession."
 28

29 **Section 4.** Section 61-7-114, MCA, is amended to read:

30 **"61-7-114. Accident reports confidential.** (1) All required accident reports and supplemental

1 reports ~~shall~~ must be without prejudice to the individual reporting and ~~shall~~ must be for the confidential use
 2 of the department or other state governmental agencies ~~having use for the records~~ for accident prevention,
 3 roadway design, motor carrier safety monitoring purposes, or for the administration of the laws of this state
 4 relating to the deposit of security and proof of financial responsibility by persons driving or the owners of
 5 motor vehicles. The department may disclose the identity of a person involved in an accident when ~~such~~
 6 the identity is not otherwise known or when ~~such~~ the person denies ~~his presence~~ being present at the
 7 accident.

8 (2) Except as provided in this section, all accident reports and supplemental information filed as
 9 required by this part ~~shall be~~ are confidential and not open to general public inspection, ~~nor shall copying,~~
 10 Copying of lists of ~~such~~ reports be is not permitted. The report and supplemental information filed by law
 11 enforcement personnel, as required by this part, may be examined and copied, without obtaining a court
 12 order, by:

- 13 (a) ~~any~~ a person named in the report ~~or reports or by any~~ OR INVOLVED IN THE ACCIDENT;
 14 (b) ~~a driver, passenger, or pedestrian involved in the accident; or by his~~
 15 (c) ~~the representative of the person~~ OR THE PERSON'S INSURANCE CARRIER, driver, passenger,
 16 or pedestrian REFERRED TO IN SUBSECTION (2)(A), designated in writing, by, OR THE INSURANCE
 17 CARRIER OF THAT PERSON;
 18 (d) ~~(C)~~ a party to a civil action arising from the accident; or
 19 (e) ~~(D) if the person is deceased, by his~~ the executor, ~~or~~ THE administrator, or ~~by~~ the attorney
 20 representing ~~his~~ the executor or administrator if the person is deceased."

21
 22 **Section 5.** Section 61-8-803, MCA, is amended to read:

23 "**61-8-803. Suspension of commercial driver's license -- serious traffic violations.** (1) If a
 24 ~~commercial motor vehicle operator's record shows that the operator~~ the department receives notice from
 25 a court or another licensing jurisdiction that a person holding a commercial driver's license has been
 26 convicted of a more than one serious traffic violation as defined in federal regulations in separate incidents
 27 within a 3-year period, the department shall suspend the person's commercial driver's license:

28 (1)(a) ~~for 60 days if the operator was convicted of two hazardous moving violations within 3 years~~
 29 upon receipt of notice of the second conviction; or

30 (2)(b) ~~for 120 days if the operator was convicted of three hazardous moving violations within 3~~

1 ~~years~~ upon receipt of notice of the third or subsequent conviction.

2 (2) For purposes of this section, "serious traffic violation" means conviction, when operating a
3 commercial motor vehicle, of:

4 (a) speeding in excess of 15 miles an hour above a posted speed limit;

5 (b) reckless driving;

6 (c) improper or erratic traffic lane changes;

7 (d) following too closely; or

8 (e) a violation of a state law or local ordinance relating to the operation of a motor vehicle,
9 excluding a parking, weight, or equipment violation, that arises in connection with a fatal accident."

10

11 **Section 6.** Section 61-8-805, MCA, is amended to read:

12 **"61-8-805. Suspension for operating a commercial vehicle with alcohol concentration of 0.04 or**

13 **more -- hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in

14 actual physical control of a commercial motor vehicle is subject to the suspension of the person's

15 commercial driver's license. ~~If the department receives a sworn report from a peace officer that the person~~

16 ~~was operating a commercial motor vehicle while the person's alcohol concentration was 0.04 or more, the~~

17 ~~department shall suspend the person's commercial driver's license~~ The peace officer who determines that

18 the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more shall

19 immediately seize the person's commercial driver's license and, on behalf of the department, give the

20 person written notice of the license suspension and the right to a hearing under 61-8-808. Upon receipt

21 of a certified report from the peace officer that the person was operating a commercial motor vehicle with

22 an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for

23 a restricted probationary commercial license, for:

24 (a) ~~for 1 year, with no provision for a restricted probationary license or endorsement,~~ upon receipt

25 of the first report of a 0.04 or more alcohol concentration violation, except that if the ~~offense~~ violation

26 occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension must

27 be for 3 years; and

28 (b) ~~for life, with no provision for a restricted probationary license or endorsement,~~ upon receipt of

29 a second or subsequent 0.04 or more alcohol concentration violation report at any time as determined from

30 the records of the department, ~~unless a restricted license or endorsement is allowed by federal rules~~

1 ~~governing commercial drivers~~ subject to federal rules allowing for driver rehabilitation and license
 2 reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

3 (2) A peace officer who determines that a commercial motor vehicle operator has ~~any~~ a measured
 4 amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle
 5 shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24
 6 hours.

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

10 ~~(4) The department shall immediately notify in writing any person whose commercial driver's~~
 11 ~~license is suspended under this section. The person may file a petition within 30 days after the notice is~~
 12 ~~given for a hearing in the matter in the district court in the county in which the finding of alcohol~~
 13 ~~concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days'~~
 14 ~~written notice to the county attorney of the county in which the appeal is filed. The county attorney shall~~
 15 ~~represent the state. The court shall take testimony and examine the facts of the case, except that the issue~~
 16 ~~is limited to whether the person was driving or had actual physical control of a commercial motor vehicle~~
 17 ~~while the person's alcohol concentration was 0.04 or more. The court shall determine whether the~~
 18 ~~petitioner is entitled to a commercial driver's license or is subject to suspension as provided in this section.~~
 19 ~~The provisions of 61-8-404 apply to any proceedings under this section."~~

20
 21 **Section 7.** Section 61-8-806, MCA, is amended to read:

22 **"61-8-806. Blood, breath, or urine tests of commercial vehicle operators -- procedure --**
 23 **suspension.** (1) A person who operates a commercial motor vehicle upon the ways of this state open to
 24 the public is considered to have given consent, ~~subject to the provisions of 61-8-401 and 61-8-805,~~ to a
 25 test of the ~~operator's~~ person's blood, breath, or urine for the purpose of determining ~~any~~ a measured ~~or~~
 26 ~~detected~~ amount or detected presence of alcohol in the ~~operator's~~ person's body if the ~~operator~~ person is
 27 requested to submit to the test by a peace officer ~~having~~ who has reasonable grounds to believe that the
 28 person ~~to have been~~ was driving or in actual physical control of a commercial motor vehicle upon the ways
 29 of this state open to the public while having ~~any measurable or detectable~~ a measured alcohol concentration
 30 or detected presence of alcohol. The peace officer may designate a blood, breath, or urine test to be

1 administered and may request that the person submit to a preliminary alcohol screening test before a blood,
2 breath, or urine test is taken.

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

5 (3) If a ~~commercial motor vehicle operator who is a resident of Montana~~ person refuses ~~upon the~~
6 ~~request of a peace officer~~ to submit to a test designated by the officer ~~as provided in subsection (1),~~ the
7 test may not be given. ~~On behalf of the department,~~ but the officer shall immediately seize the person's
8 commercial driver's license and forward the license to the department, along with a ~~sworn~~ report certified
9 under penalty of law that the officer had reasonable grounds to believe that the person ~~had been~~ was
10 driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the
11 public while having ~~any a~~ measurable or detectable alcohol concentration or detected presence of alcohol
12 and that the person had refused to submit to the test upon the request of the officer. Upon receipt of the
13 report, the department shall suspend the license for a period provided in subsection (5).

14 (4) Upon seizure of a ~~resident's~~ person's commercial driver's license, the peace officer shall issue,
15 on behalf of the department, a temporary 5-day noncommercial driving permit. ~~The temporary driving permit~~
16 ~~is valid for 72 hours after issuance,~~ effective 12 hours after the time of issuance, and shall provide the
17 person with written notice of the license suspension and the right to a hearing under 61-8-808.

18 (5) ~~If a commercial motor vehicle operator refuses to submit to a test as provided in subsection (3),~~
19 ~~the department shall suspend the operator's commercial driver's license~~ Upon receipt of the officer's
20 certified report, the department shall suspend the person's commercial driver's license, with no provision
21 for a restricted probationary commercial driver's license, for:

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

25 (b) life, upon a second or subsequent refusal at any time as determined from the records of the
26 department, ~~for life, with no provision for a restricted probationary license or endorsement unless allowed~~
27 ~~by federal rules governing commercial drivers~~ subject to federal rules allowing for driver rehabilitation and
28 license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

29 (6) ~~A nonresident commercial motor vehicle operator who refuses to submit to a test as provided~~
30 ~~in subsection (3) is subject to suspension by the department as provided in subsection (5) and must be~~

1 ~~given a temporary driving permit as provided in subsection (4)."~~

2
3 **Section 8.** Section 61-8-808, MCA, is amended to read:

4 **"61-8-808. Right of appeal to court.** ~~(1) The department shall immediately notify in writing any~~
5 ~~person whose commercial driver's license has been suspended under the provisions of 61-8-806, and the~~
6 ~~person may, within~~ Within 30 days after receipt of notification notice of the suspension and the right to
7 a hearing has been given by the peace officer under 61-8-805 or 61-8-806, the person may file a petition
8 for a hearing on the matter in the district court in the county where the person resides or to challenge the
9 suspension in the district court in the county where the finding of 0.04 or more alcohol concentration or
10 refusal was made.

11 (2) The court has jurisdiction and shall set the matter for hearing upon. The court shall give at least
12 10 days' written notice to the county attorney of the county where the appeal is filed. The county attorney
13 shall represent the state.

14 (3) The court shall take testimony and examine the facts of the case, except that:

15 (a) with regard to a suspension under 61-8-805, the issue is limited to whether the person was
16 driving or had actual physical control of a commercial motor vehicle while the person's alcohol
17 concentration was 0.04 or more; and

18 (b) with regard to a suspension under 61-8-806, the issues are limited to whether a peace officer
19 had reasonable grounds to believe that the person had been driving or was in actual physical control of a
20 commercial motor vehicle upon ways of this state open to the public while the person had any a measurable
21 or detectable alcohol concentration, whether the person was ordered to submit to a test, and whether the
22 person refused to submit to the test.

23 (4) The court shall determine whether the petitioner is entitled to a commercial driver's license or
24 is subject to suspension as provided in this part."

25
26 **Section 9.** Section 61-8-812, MCA, is amended to read:

27 **"61-8-812. Suspension of commercial driver's license -- operation of out-of-service vehicle.** (1)
28 Upon receipt of information that a commercial motor vehicle operator notice from a court of competent
29 jurisdiction or another licensing jurisdiction that a person holding a commercial driver's license has been
30 convicted of a violation of operating a commercial motor vehicle that has been placed violating an out of

1 ~~service~~ out-of-service order, the department shall suspend the ~~operator's~~ person's commercial driver's
2 license for;

3 (a) 6 months for a first conviction ~~and for~~;

4 (b) 1 year for a second ~~or subsequent~~ conviction if the vehicle being operated by the person at the
5 time of the violation was not transporting placardable hazardous materials or was not designed or being
6 used to transport more than 15 passengers, inclusive of the driver; and

7 (c) 3 years:

8 (i) for a second conviction if the vehicle:

9 (A) being operated at the time of the violation was transporting placardable hazardous materials;

10 or

11 (B) was designed or being used to transport more than 15 passengers, inclusive of the driver; and

12 (ii) for a third or subsequent conviction.

13 (2) For purposes of this section, an offender is considered to have been previously convicted if less
14 than 10 years have elapsed between the commission of the present offense and a previous conviction.

15 (3) A temporary or probationary commercial driver's license may not be issued while a commercial
16 driver's license is suspended under subsection (1)."

17 -END-