



Oregon

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TO: Senate Judiciary Committee

FROM: Gregg Dal Ponte, Administrator
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SUBJECT: Senate Bill 126, -1 amendments

INTRODUCTION

Senate Bill 126, as amended, strengthens requirements for reporting truck driver drug test results and instances in which drivers refuse to be tested. The bill allows a motor carrier employer to report to Oregon's Driver and Motor Vehicle Services Division (DMV) when it knows an employee has tested positive for drugs. It also makes the carrier responsible for reporting if an employee refuses to take a test.

The changes address shortcomings in current law. Today, it's possible for a truck driver who tests positive for drugs or refuses to take a drug test to hide that drug problem and find employment driving trucks. If fired from one job for the drug problem, drivers can too easily get a job with another unknowing motor carrier. The changes will enhance highway safety and support efforts to reduce truck at-fault crashes.

BACKGROUND

All Commercial Driver License (CDL) holders are subject to drug and alcohol testing. Motor carriers must maintain a testing program for drivers or enroll drivers with a service agent, called a consortium, who manages testing. Carriers face a maximum \$1,000 per violation penalty if they don't have a program.

Under federal law, CDL holders are subject to five testing requirements:

1. Pre-employment – A driver must receive a negative result from a drug test before starting safety-sensitive duties.
2. Random – Drug and alcohol tests must continue to randomly occur.
3. Post-Accident – Regardless of who is at-fault, a CDL holder must submit to drug and alcohol testing when involved in a fatal accident, when cited for a moving traffic violation resulting in an accident in which a person requires immediate medical treatment away from the scene, or when a vehicle is towed away.
4. Reasonable Suspicion – Required when a trained motor carrier official or supervisor observes or documents behavior indicating drug or alcohol use.
5. Return-to-Duty – Required before a driver returns to work after failing a test or refusing to test. The driver must pass an alcohol test resulting in less than .02 alcohol concentration or receive a negative drug test result, whichever applies. The driver must also be evaluated by a substance abuse professional.

A driver may not refuse to submit to a random, post-accident, reasonable suspicion, or a return-to-duty test. A driver's refusal to test is considered the same as a positive test.

Drug and alcohol testing is administered by a Medical Review Officer (MRO), a licensed physician trained to handle drug test lab results and evaluate medical explanations for certain test results.

Oregon law requires that when a driver with an Oregon CDL tests positive for drugs, the MRO involved must report that to Oregon DMV so it can be entered on the driver's employment driving record. But there is no penalty for failing to report the results. MROs are located throughout the country and it's believed that many ignore Oregon's law.

According to the U.S. Department of Transportation, each year from 1994 through 2005 random testing found from 1.3 percent to 2.8 percent of truck drivers tested positive for illegal drugs. There are more than 141,000 Oregon CDL holders, yet Oregon DMV annually receives less than 500 reports of positive drug test results.

When DMV receives a report, it first advises the driver of the right to a hearing. If a hearing is requested, no entry is made on the record until the hearing is complete. Once drug test information has been entered on a commercial driving record, DMV releases that information only with the written permission of the driver.

WHAT THE BILL DOES

Senate Bill 126, as amended, makes two major and three minor changes to Oregon law related to drug testing of commercial motor vehicle drivers.

The first major change is to require that a motor carrier employer must report to DMV if an employee refuses to take a drug test. This would apply in all cases except when a non-employee refuses to submit to a pre-employment drug test. Motor carriers would be subject to penalty for failing to report refusals to test. Adding this information to the employment driving record, and making it available with the person's permission, would better inform motor carriers about the person's fitness to drive a truck.

The second major change is to allow a motor carrier to report to DMV if the carrier knows an employee has tested positive for drugs. Under existing Oregon law, only a MRO is required to report positive drug test results and DMV does not take reports from carriers.

One minor change made by the amended Senate Bill 126 addresses what can be challenged when a person who is the subject of a drug-test-related notice requests a hearing before DMV posts information on the employment driving record. Such a hearing should not discuss whether a motor carrier has a drug testing program or belongs to a drug testing consortium. The hearing should simply confirm that the person named in the report is the person who took the test, the person is subject to the federal drug testing

requirements, the MRO making the report correctly followed protocols, and, in the case of refusals to test, the circumstances constitute a refusal under federal law.

A second minor change addresses the need to protect motor carriers so they may not be held civilly liable for damage resulting from placing drug test-related information on the employment driving record. Current law provides this protection only for the department. Expanding the protection should make carriers more confident about reporting to DMV.

A third minor change involves requiring that a motor carrier report the name of the service agent (consortium) used for its drug and alcohol testing program, if the carrier does not operate its own program. Current law is unnecessarily specific when it requires carriers to report the "names of persons who operate the consortium."

SUMMARY

Senate Bill 126, as amended, strengthens Oregon law related to truck driver drug testing. It allows motor carrier employers to report positive drug test results and it makes them report refusals to test. Currently only a MRO reports results to DMV, but there's no penalty for failing to report and there's no requirement to report a refusal to test.

This bill enhances highway safety by helping motor carriers remove unfit truck drivers from behind the wheel. It supports the department's Key Performance Measure #6 – reducing truck at-fault crashes, and Oregon's Benchmark #45 – reducing preventable deaths.