

Calendar No. 404

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
114-232

DRUG FREE COMMERCIAL DRIVER ACT OF
2015

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 806



MARCH 28, 2016.—Ordered to be printed
Filed, under authority of the order of the Senate of March 17, 2016

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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DRUG FREE COMMERCIAL DRIVER ACT OF 2015

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Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 806]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 806) to amend section 31306 of title 49, United States Code, to recognize hair as an alternative specimen for preemployment and random controlled substances testing of commercial motor vehicle drivers and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of the Drug Free Commercial Driver Act of 2015 is to allow motor carriers to use hair testing as an acceptable alternative to urinalysis for detecting use of controlled substances by individuals for preemployment screening and random screening.

BACKGROUND AND NEEDS

Current Federal law requires motor carriers to conduct pre-employment drug testing and random drug and alcohol testing to help prevent accidents and injuries resulting from the misuse of alcohol, or use of controlled substances, by operators of commercial motor vehicles.¹ Specifically, the Department of Transportation

¹49 CFR 382 – Controlled Substances and Alcohol Use and Testing. Available at: <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr;sid=7be618c5eb56986bf8b5bd134450b9f3>;

Continued

(DOT) requires urinalysis for alcohol, marijuana metabolites, cocaine metabolites, opiates metabolites, amphetamines, and phencyclidine (known as PCP).²

Hair testing may be more effective than a urinalysis to screen for certain prohibited substances. Unlike urinalysis, which only detects drug use in the last two to three days, hair testing is able to detect drug use for up to 90 days. The Drug Testing Advisory Board at the Substance Abuse and Mental Health Services Administration, a division of the Department of Health and Human Services (HHS), has started collecting information related to hair-specimen drug testing, including the specimen, its collection, specimen preparation, analyses, cutoffs, specimen validity, and initial and confirmatory testing.³

Hair testing cannot detect alcohol, so urinalysis will still be required for post-accident screening.

The results of drug tests conducted using hair testing would be submitted to the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) which maintains records of positive tests, and test refusals for operators required to take drug or alcohol tests. Established pursuant to the Moving Ahead for Progress in the 21st Century Act (MAP-21),⁴ the purpose of the Clearinghouse is to improve compliance with testing and enhance safety of roadways by reducing accidents and injuries involving the misuse of alcohol or use of controlled substances by commercial motor vehicle operators.

SUMMARY OF PROVISIONS

The Drug Free Commercial Driver Act of 2015 would allow motor carriers to use hair testing in lieu of urinalysis for preemployment screening and random screening for the use of a controlled substance. The bill also would make a number of program adjustments and improvements to the commercial motor vehicle substance screening process, including—

- providing for the use of hair testing as an acceptable alternative to urinalysis for detecting use of drugs by individuals, but only for preemployment screening and random screening;
- allowing a motor carrier, which demonstrates it is able to carry out a hair testing program consistent with generally accepted industry standards, to apply to the Administrator of the Federal Motor Carrier Safety Administration (FMCSA) for exemption from mandatory urinalysis testing; and
- directing the Secretary of HHS to issue scientific and technical guidelines for hair testing as a method for detecting the use of controlled substances.

rqn=div5;view=text;node=49%3A5.1.1.2.25;idno=49;cc=ecfr#se49.5.382_1101. (Accessed on May 8, 2015).

²Federal Motor Carrier Safety Administration: Drug and Alcohol Testing Brochure for Drivers Link. Available at: <http://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Drug-and-Alcohol-Brochure-for-Driver.pdf>. (Accessed June 12, 2015).

³Dept. of Health and Human Services Seeks Information on Hair Testing. Available at <http://www.tnnews.com/articles/basetemplate.aspx?storyid=38417>. (Accessed June 12, 2015).

⁴49 U.S.C. 31306(a).

LEGISLATIVE HISTORY

On March 19, 2015, the Drug Free Commercial Driver Act of 2015 was introduced by Senator Boozman and cosponsored by Senators Manchin, Heitkamp, and Fischer. On May 20, 2015, the Committee met in open Executive Session and, by a voice vote, ordered S. 806 to be reported favorably, with an amendment in the nature of a substitute, including two amendments. The accepted amendments would give the Secretary of Transportation increased flexibility and allow the Secretary of HHS, when issuing guidelines for hair testing, to consider differentiating between exposure to, and usage of, various controlled substances.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 806—Drug Free Commercial Driver Act of 2015

S. 806 would direct the Department of Transportation (DOT) along with the Department of Health and Human Services (HHS) to issue regulations that allow motor carriers to use hair testing as an alternative to urinalysis when conducting pre-employment and random substance abuse testing of their commercial drivers. The bill also would require HHS to establish requirements for laboratory protocols for hair testing.

Under current law, motor carriers are required to test their drivers for substance abuse and, under DOT regulations, may only use urinalysis. S. 806 would require DOT to expand the allowable testing regimes to hair. CBO estimates that DOT would need two staff members for two years to complete this regulatory change and to review applications from motor carriers for exemptions until the rule is complete, which would cost about \$500,000.

HHS recently completed proposed guidelines on detecting substance abuse using a specimen of an individual's saliva. Based on information from the agency and its experience producing the proposed guidelines related to saliva testing, CBO estimates that producing similar guidelines for hair testing would cost about \$3 million, mostly for subject matter experts and testing of protocols.

As a result, CBO estimates that implementing the bill would cost \$4 million over the 2016–2020 period, assuming the appropriation of the necessary amounts. Enacting S. 806 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 806 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contacts for this estimate are Sarah Puro (for the Department of Transportation), and Andrea Noda and Ellen Werble (for the Department of Health and Human Services). The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The Drug Free Commercial Driver Act of 2015, as reported, would allow, but would not require, hair testing as an acceptable alternative to urinalysis for any motor carrier operating in the United States. If a company opts to use hair testing, as an alternative to urinalysis, for controlled substances the company and its employees would then be subject to new regulatory requirements.

ECONOMIC IMPACT

Enactment of this legislation is not expected to have any significant adverse impacts on the Nation's economy.

PRIVACY

This bill would require all companies that choose to use hair testing as an alternative to urinalysis to notify the Clearinghouse of any positive test results or any refusal to the testing process. The development of the Clearinghouse is required by MAP-21. The Clearinghouse was established to ensure compliance with the DOT's alcohol and controlled substances testing program. The Clearinghouse would enhance the safety of roadways by reducing accidents and injuries involving the misuse of alcohol and controlled substances by commercial motor vehicle operators. The establishment of the Clearinghouse is currently in the final rule-making phase of development.

PAPERWORK

This bill would add a new reporting requirement: it would mandate that the Secretary of Transportation submit an annual report to Congress, including a summary of results of preemployment and random screening using hair testing and urinalysis, an evaluation and comparison of both methods, and a determination of which method is the most accurate over time.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section would designate the short title of this bill as the "Drug Free Commercial Driver Act of 2015."

Section 2. Authorization of hair testing as an acceptable procedure for pre-employment and random controlled substance tests.

This section would allow the use of hair testing for preemployment screening for the use of controlled substances and subsequent random screening.

Section 3. Exemption from mandatory urinalysis.

A motor carrier would be allowed to apply to the FMCSA for an exemption that if granted would permit the carrier to use hair testing as an alternative to urinalysis for preemployment and subsequent random screening for the use of a controlled substance. To obtain the exemption, the motor carrier would have to demonstrate the ability to conduct hair testing consistent with industry standards.

In evaluating applications for exemptions, the FMCSA would be required to ensure that: a company's testing procedures and protections are similar to those used by other fleets, have met the satisfaction of the Administrator of the FMCSA to carry out hair testing, and have used those methods for more than one year; the testing laboratory has received accreditation from an accrediting body compliant with international or Federal standards; and the hair testing standards used have been approved by the Food and Drug Administration.

Positive test results and test refusals would be submitted to the Clearinghouse as they are with current urine tests.

Section 4. Guidelines for hair testing.

Within one year of the date of enactment of the Act, the Secretary of HHS would be required to issue scientific and technical guidelines for hair testing as a way of differentiating between exposure to, and use of, various controlled substance.

Section 5. Annual report to Congress.

The Secretary of Transportation would be required to submit an annual report to Congress, including a summary of results of pre-employment and random screening using hair testing and urinalysis, a comparison of both methods, and a determination of which method would be the most accurate over time.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49. TRANSPORTATION

SUBTITLE VI. MOTOR VEHICLE AND DRIVER PROGRAMS

PART B. COMMERCIAL

CHAPTER 313. COMMERCIAL MOTOR VEHICLE OPERATORS

§ 31306. Alcohol and controlled substances testing

(a) DEFINITION.—In this section and section 31306a, “controlled substance” means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) specified by the Secretary of Transportation.

(b) TESTING PROGRAM FOR OPERATORS OF COMMERCIAL MOTOR VEHICLES.—

(1)(A) In the interest of commercial motor vehicle safety, the Secretary of Transportation shall prescribe regulations that establish a program requiring motor carriers to conduct pre-employment, reasonable suspicion, random, and post-accident testing of operators of commercial motor vehicles for the use of a controlled substance in violation of law or a United States Government regulation and to conduct reasonable suspicion, random, and post-accident testing of such operators for the use of alcohol in violation of law or a United States Government regulation. **【The regulations shall permit such motor carriers to conduct preemployment testing of such employees for the use of alcohol.】**

(B) The regulations prescribed under subparagraph (A) shall permit motor carriers—

(i) to conduct preemployment testing of commercial motor vehicle operators for the use of alcohol; and

(ii) to use hair testing as an acceptable alternative to urinalysis—

(I) in conducting preemployment screening for the use of a controlled substance; and

(II) in conducting random screening for the use of a controlled substance by individuals who were subject to preemployment screening.

【(B)】(C) When the Secretary of Transportation considers it appropriate in the interest of safety, the Secretary may prescribe regulations for conducting periodic recurring testing of operators of commercial motor vehicles for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(2) In prescribing regulations under this subsection, the Secretary of Transportation—

(A) shall require that post-accident testing of an operator of a commercial motor vehicle be conducted when loss of human life occurs in an accident involving a commercial motor vehicle; and

(B) may require that post-accident testing of such an operator be conducted when bodily injury or significant property damage occurs in any other serious accident involving a commercial motor vehicle.

(c) TESTING AND LABORATORY REQUIREMENTS.—In carrying out subsection (b) of this section, the Secretary of Transportation shall develop requirements that shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimens;

(2) for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—

(A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing;

(B) the minimum list of controlled substances for which individuals may be tested; **[and]**

(C) appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section; *and*

(D) laboratory protocols and cut-off levels for hair testing to detect the use of a controlled substance;

(3) require that a laboratory involved in testing under this section have the capability and facility, at the laboratory, of performing screening and confirmation tests;

(4) provide that any test indicating the use of alcohol or a controlled substance in violation of law or a Government regulation be confirmed by a scientifically recognized method of testing capable of providing quantitative information about alcohol or a controlled substance;

(5) provide that each specimen be subdivided, secured, and labeled in the presence of the tested individual and that a part of the specimen be retained in a secure manner to prevent the possibility of tampering, so that if the individual's confirmation test results are positive the individual has an opportunity to have the retained part tested by a 2d confirmation test done independently at another certified laboratory if the individual requests the 2d confirmation test not later than 3 days after being advised of the results of the first confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations that may be necessary and in consultation with the Secretary of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (except information about alcohol or a controlled substance) of employees, except that this clause does not prevent the use of test results for the orderly imposition of appropriate sanctions under this section; and

(8) ensure that employees are selected for tests by non-discriminatory and impartial methods, so that no employee is

harassed by being treated differently from other employees in similar circumstances.

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