

Calendar No. 404

114TH CONGRESS
2^D SESSION

S. 806

[Report No. 114–232]

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.

IN THE SENATE OF THE UNITED STATES

MARCH 19, 2015

Mr. BOOZMAN (for himself, Mr. MANCHIN, Ms. HEITKAMP, Mrs. FISCHER, Ms. BALDWIN, Mr. MORAN, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MARCH 28, 2016

Reported, under authority of the order of the Senate of March 17, 2016, by
Mr. THUNE, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Drug Free Commercial
 5 Driver Act of 2015”.

6 **SEC. 2. AUTHORIZATION OF HAIR TESTING AS AN ACCEPT-**
 7 **ABLE PROCEDURE FOR PREEMPLOYMENT**
 8 **AND RANDOM CONTROLLED SUBSTANCE**
 9 **TESTS.**

10 Section 31306 of title 49, United States Code, is
 11 amended—

12 (1) in subsection (b)(1)—

13 (A) by redesignating subparagraph (B) as
 14 subparagraph (C); and

15 (B) in subparagraph (A), by striking “The
 16 regulations shall permit such motor carriers to
 17 conduct preemployment testing of such employ-
 18 ees for the use of alcohol.” and inserting the
 19 following:

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

22 “(i) to conduct preemployment testing of com-
 23 mercial motor vehicle operators for the use of alco-
 24 hol; and

1 “(ii) to use hair testing as an acceptable alter-
2 native to urinalysis—

3 “(I) in conducting preemployment screen-
4 ing for the use of a controlled substance; and

5 “(II) in conducting random screening for
6 the use of a controlled substance by individuals
7 who were subject to preemployment screening.”;
8 and

9 (2) in subsection (c)(2)—

10 (A) in subparagraph (B), by striking
11 “and” at the end;

12 (B) in subparagraph (C), by inserting
13 “and” after the semicolon; and

14 (C) by adding at the end the following:

15 “(D) laboratory protocols and cut-off levels
16 for hair testing to detect the use of a controlled
17 substance;”.

18 **SEC. 3. EXEMPTION FROM MANDATORY URINALYSIS.**

19 (a) **IN GENERAL.**—Any motor carrier that dem-
20 onstrates, to the satisfaction of the Administrator of the
21 Federal Motor Carrier Safety Administration, that it can
22 carry out an applicable hair testing program, consistent
23 with generally accepted industry standards, to detect the
24 use of a controlled substance by commercial motor vehicle
25 operators, may apply to the Administrator for an exemp-

tion from the mandatory urinalysis testing requirements set forth in subpart C of part 382 of title 49, Code of Federal Regulations until a final rule is issued implementing the amendments made by section 2.

(b) EVALUATION OF APPLICATIONS.—In evaluating applications for exemptions under subsection (a), the Administrator shall determine if the applicant's testing program employs procedures and protections similar to fleets that have carried out hair testing programs for at least 1 year. A testing program may not receive an exemption under subsection (a) unless it uses a laboratory—

(1) whose hair testing assays have been cleared by the Food and Drug Administration under section 510(k) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360(k)); and

(2) has obtained laboratory accreditation for hair testing from the College of American Pathologists.

(c) REPORTING REQUIREMENT.—Any motor carrier that is granted an exemption under subsection (a) shall submit records to the national clearinghouse established under section 31306a of title 49, United States Code, relating to all positive test results and test refusals from the hair testing program described in that subsection.

1 **SEC. 4. GUIDELINES FOR HAIR TESTING.**

2 Not later than 1 year after the date of the enactment
 3 of this Act, the Secretary of Health and Human Services
 4 shall issue scientific and technical guidelines for hair test-
 5 ing as a method of detecting the use of a controlled sub-
 6 stance for purposes of section 31306 of title 49, United
 7 States Code, as amended by section 2.

8 **SEC. 5. ANNUAL REPORT TO CONGRESS.**

9 The Secretary of Transportation shall submit an an-
 10 nual report to Congress that—

- 11 (1) summarizes the results of preemployment
- 12 and random drug testing using both hair testing and
- 13 urinalysis;
- 14 (2) evaluates the efficacy of each method; and
- 15 (3) determines which method provides the most
- 16 accurate means of detecting the use of controlled
- 17 substances over time.

18 **SECTION 1. SHORT TITLE.**

19 *This Act may be cited as the “Drug Free Commercial*
 20 *Driver Act of 2015”.*

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 22 **ABLE PROCEDURE FOR PREEMPLOYMENT**
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 26 *amended—*

1 (1) in subsection (b)(1)—

2 (A) by redesignating subparagraph (B) as
3 subparagraph (C); and

4 (B) in subparagraph (A), by striking “The
5 regulations shall permit such motor carriers to
6 conduct preemployment testing of such employees
7 for the use of alcohol.” and inserting the fol-
8 lowing:

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

11 “(i) to conduct preemployment testing of com-
12 mercial motor vehicle operators for the use of alcohol;
13 and

14 “(ii) to use hair testing as an acceptable alter-
15 native to urinalysis—

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

18 “(II) in conducting random screening for
19 the use of a controlled substance by individuals
20 who were subject to preemployment screening.”;
21 and

22 (2) in subsection (c)(2)—

23 (A) in subparagraph (B), by striking “and”
24 at the end;

1 (B) in subparagraph (C), by inserting
 2 “and” after the semicolon; and
 3 (C) by adding at the end the following:
 4 “(D) laboratory protocols and cut-off levels
 5 for hair testing to detect the use of a controlled
 6 substance;”.

7 **SEC. 3. EXEMPTION FROM MANDATORY URINALYSIS.**

8 (a) *IN GENERAL.*—Any motor carrier that dem-
 9 onstrates, to the satisfaction of the Administrator of the
 10 Federal Motor Carrier Safety Administration, that it can
 11 carry out an applicable hair testing program, consistent
 12 with generally accepted industry standards, to detect the
 13 use of a controlled substance by commercial motor vehicle
 14 operators, may apply to the Administrator for an exemp-
 15 tion from the mandatory urinalysis testing requirements set
 16 forth in subpart C of part 382 of title 49, Code of Federal
 17 Regulations until a final rule is issued implementing the
 18 amendments made by section 2.

19 (b) *EVALUATION OF APPLICATIONS.*—

20 (1) *IN GENERAL.*—In evaluating an application
 21 for an exemption under subsection (a), the Adminis-
 22 trator shall determine if the applicant’s testing pro-
 23 gram employs procedures and protections similar to
 24 fleets that have carried out hair testing programs for
 25 at least 1 year.

1 (2) *REQUIREMENTS.*—*A testing program may*
 2 *not receive an exemption under subsection (a) unless*
 3 *the applicable testing laboratories—*

4 (A) *have obtained laboratory accreditation*
 5 *specific to hair testing from an accrediting body,*
 6 *compliant with international or other Federal*
 7 *standards as appropriate, such as the College of*
 8 *American Pathologists; and*

9 (B) *utilize hair testing assays that have*
 10 *been cleared by the Food and Drug Administra-*
 11 *tion under section 510(k) of the Federal Food,*
 12 *Drug, and Cosmetic Act (21 U.S.C. 360(k)).*

13 (c) *REPORTING REQUIREMENT.*—*Any motor carrier*
 14 *that is granted an exemption under subsection (a) shall sub-*
 15 *mit records to the national clearinghouse established under*
 16 *section 31306a of title 49, United States Code, relating to*
 17 *all positive test results and test refusals from the hair test-*
 18 *ing program described in that subsection.*

19 **SEC. 4. GUIDELINES FOR HAIR TESTING.**

20 *Not later than 1 year after the date of the enactment*
 21 *of this Act, the Secretary of Health and Human Services*
 22 *shall issue scientific and technical guidelines for hair test-*
 23 *ing as a method of detecting the use of a controlled sub-*
 24 *stance for purposes of section 31306 of title 49, United*
 25 *States Code, as amended by section 2. When issuing the sci-*

1 *entific and technical guidelines, the Secretary may consider*
2 *differentiating between exposure to and usage of various*
3 *controlled substances.*

4 **SEC. 5. ANNUAL REPORT TO CONGRESS.**

5 *The Secretary of Transportation shall submit an an-*
6 *nual report to Congress that—*

7 *(1) summarizes the results of preemployment and*
8 *random drug testing using both hair testing and uri-*
9 *nalysis;*

10 *(2) evaluates the efficacy of each method; and*

11 *(3) determines which method provides the most*
12 *accurate means of detecting the use of controlled sub-*
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