

Written Testimony

of

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North Carolina Positive Drug Test Reporting Law

This testimony is based on the following areas of the program:

- History
- The Law
- Positive Drug/Alcohol Reporting
- CDL Disqualification/Motor Vehicle Report (MVR) Acknowledgment of Positive Test
- Request for Preliminary Hearing
- Requirements to end Disqualification for Positive Test or Refusal to Submit
- Current Statistics
- Program Benefits
- Program Costs
- Future Upgrade Costs

History of Program:

In 2004, the Commercial Driver License Branch of the North Carolina Division of Motor Vehicles was approached by the North Carolina Public Transportation Association for the purpose of proposing legislation which would require the employer of a commercial driver who tested positive for drugs or alcohol (as described under Federal Regulation 49 C.F.R. part 382) to report the positive results to the division.

The North Carolina Public Transportation Association wanted to eliminate the problem of an employee who tested positive and who was dismissed from employment from going to another transit company a few weeks later and being employed. In this scenario, the driver would wait until he/she would feel confident they could pass the pre-employment drug/alcohol test, go to the interview, be screened for drugs/alcohol, pass, and be hired and driving the next day.

The Division of Motor Vehicles worked with this group and together drafted legislation which was passed and signed by Governor Mike Easley. This Bill became law on December 1, 2005. During the early stages of the drafting of this legislation, we had the help of the North Carolina Trucking Association, which is very supportive of the Positive Drug/Alcohol reporting program. Also very helpful was the State Director of the Federal Motor Carrier Safety Administration, Chris Hartley and his staff.

In 2007, we asked the legislature to make changes to our law to address refusals to take the test and require pre-employment positives to be reported to the division. We wanted to make it clear that if a driver refuses to take a drug or alcohol test it will be reported to the Division as a positive test. We also wanted the pre-employment positive results reported to the Division as well.

The North Carolina Legislature passed the above changes into law. This effort was greatly enhanced by the North Carolina Trucking Association and President Charlie Diehl who supported the changes and spoke before the legislative subcommittee. House Bill 769 was passed and signed by Governor Mike Easley on August 30, 2007.

The Law:

N.C. G.S. 20-37.19(c). Employer responsibilities.

“(c) The employer of any employee or applicant who tests positive or of any employee who refuses to participate in a drug or alcohol test required under 49 C.F.R. Part 382 and 49 C.F.R. Part 655 must notify the Division in writing within five business days following the employer's receipt of confirmation of a positive drug or alcohol test or of the employee's refusal to participate in the test. The notification must include the driver's name, address, drivers license number,

social security number, and results of the drug or alcohol test or documentation from the employer of the refusal by the employee to take the test.”

N.C.G.S. 20-17.4(l) Disqualification to drive a commercial motor vehicle.

“(l) Disqualification Based on Drug or Alcohol Test. – Upon receipt of notice of a positive drug or alcohol test, or of refusal to participate in a drug or alcohol test, pursuant to G.S. 20-37.19(c), the Division must disqualify a CDL holder from operating a commercial motor vehicle until receipt of proof of successful completion of assessment and treatment by a substance abuse professional in accordance with 49 C.F.R. § 382.503.”

N.C.G.S. 20-396(b) Unlawful Motor Carrier Operations.

“Any motor carrier, or other person, or any officer, agent, employee, or representative thereof, who shall willfully fail or refuse to make a report to the Division or Department of Crime Control and Public Safety as required by this Article, or other applicable law, or to make specific and full, true, and correct answer to any question within 30 days from the time it is lawfully required by the Division or Department of Crime Control and Public Safety so to do, or to keep accounts, records, and memoranda in the form and manner prescribed by the Division or Department of Crime Control and Public Safety or shall knowingly and willfully falsify, destroy, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully neglect or fail to make true and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, or person required under this Article to keep the same, or shall knowingly and willfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the Division or Department of Crime Control and Public Safety with respect thereto, shall be deemed guilty of a Class 3 misdemeanor and punished for each offense only by a fine of not more than five thousand dollars (\$5,000). As used in this subsection the words “kept” and “keep” shall be construed to mean made, prepared or compiled as well as retained.”

N.C.G.S. 20-37.20B. Appeal of disqualification for testing positive in a drug or alcohol test.

“Following receipt of notice pursuant to G.S. 20-37.19(c) of a positive test in an alcohol or drug test, the Division shall notify the driver of the pending disqualification of the driver to operate a commercial vehicle and the driver’s right to a hearing if requested within 20 days of the date of the notice. If the Division receives no request for a hearing, the disqualification shall become effective at the end of the 20-day period. If the driver requests a hearing, the disqualification shall be stayed pending outcome of the hearing. The hearing shall take place at the offices of the Division of Motor Vehicles in Raleigh. **The hearing shall be limited to issues of testing procedure and protocol.** A copy of a positive test

result accompanied by certification by the testing officer of the accuracy of the laboratory protocols that resulted in the test result shall be prima facia evidence of a confirmed positive test result. The decision of the Division hearing officer may be appealed in accordance with the procedure of G.S. 20-19(c6).”

Positive Drug/Alcohol Reporting:

The North Carolina positive drug test reporting law strengthens the current federal regulations that require a driver who tests positive to be removed from a safety sensitive position such as driving a commercial motor vehicle. Federal regulations would allow the driver to return to duty once he/she has a negative drug/alcohol test performed.

The North Carolina Division of Motor Vehicles will disqualify a driver’s CDL if we receive a positive test result following pre-employment, random, reasonable suspicion, or post-accident testing. The North Carolina Division of Motor Vehicles will also disqualify a driver who refuses to take a drug/alcohol test for random, reasonable suspicion, and post accident testing.

Once the motor carrier (employer) reports the positive test to the Division we will send the driver a letter of official notice. This letter gives the effective date of the disqualification (twenty days from the date of letter) and informs the driver a preliminary hearing is allowed.

CDL Disqualification/Motor Vehicle Report (MVR) acknowledgment of positive test:

When the Division receives from the employer the Federal Testing Custody and Control form signed by the Medical Review Officer (MRO) and the CDL-8 (Positive Drug/Alcohol Test Form) or a CDL-9 (Refusal to submit to a Federal Drug/Alcohol Test Form), the Division will enter onto the driver’s motor vehicle record a pending disqualification, which will become effective twenty days from the date correspondence is mailed to the driver.

- a. Test results form must have the name and signature of the Medical Review Officer, not the certifying scientist.
- b. Test results form must have the date and reason for the test.
- c. Test results form must certify that the testing was performed by federal requirements and guidelines.
- d. Alcohol test form must show a BAC of .04 or more before the disqualification can be entered.

- e. Alcohol test form must have the name and signature of the Breath Alcohol Technician.

The disqualification will remain indefinite until the driver completes a substance abuse assessment.

The driver's MVR will only show the date of the disqualification followed by "Disq:" CDL Disqualification GS 20-17.4(l).

Request for Preliminary Hearing:

In accordance with N.C.G.S. 20-37.20B, a driver may request a preliminary hearing, but the request must be made prior to the effective date of the disqualification. **The preliminary hearing may only address the testing protocol and procedures per federal guidelines.** No other issues may be heard based on North Carolina statute. The disqualification is stayed pending the final decision of the hearing. The driver has thirty days to appeal an adverse decision to the Superior Court pursuant to N.C.G.S. 20-19(c6).

Requirements to End a Disqualification for Positive Test or Refusal to Submit:

To end the disqualification, the Division must receive verification from a Substance Abuse Professional that the employee successfully completed the substance abuse assessment and any training or education that was required, per N.C.G.S. 20-17.4(l).

The disqualification will end on the date the completion is received by the Division of Motor Vehicles. Completions are to be sent to the NC DMV, Hearings Unit, 3116 Mail Service Center, Raleigh, NC 27699-3116 or faxed to (919) 861-3822.

Current Statistics:

Program Results as of October 17, 2007:

The positive drug test reporting law was signed by Governor Mike Easley on July 5, 2005, to become effective on December 1, 2005. The Division received its first notice of a violation in February 2006.

The following data represents positive notifications we have received from employers beginning with the first action in February 2006 through October 17, 2007.

Positive Tests Reported	-	544
Current Active Disqualification	-	357
Completed Assessment	-	150
Current Pending Disqualifications	-	20
Completed SAP prior to Disqualification	-	17
Hearings Requested	-	62
Hearings Cancelled or Did not Appear	-	13
Hearings Actually Conducted	-	49

North Carolina CDL Data:

As of October 1, 2007, North Carolina had 325,158 CDL holders, 46,877 of whom held a Hazardous Materials (HazMat) endorsement.

We have approximately 23,000 Interstate Carriers in North Carolina.

Program Benefits:

Though most of the data we currently collect must be retrieved manually, DMV personnel assigned to this unit can provide statistics on a number of issues:

- Determine how many positives are received.
- What segment of the commercial industry the positive test result is from. Example: of the 544 positive tests reported, 53 are from school systems reporting school bus driver positives. This equals 9.6% of all positive test results. This one program benefit makes it all worth our effort. School bus drivers transport the most precious cargo we have in North Carolina, our school children.
- What illegal substance was detected during the test or amount of blood alcohol content (BAC). For instance, of the 53 school bus driver positives 27 tested positive for Marijuana, 23 for Cocaine, one for Amphetamines, one for alcohol, and one for a refusal.
- The geographical location within the state where the positive results were reported.
- Reason for the test or refusal (random, reasonable suspicion, post

accident, or pre-employment).

Other program benefits are:

- North Carolina is disqualifying the commercial driver from driving a commercial motor vehicle legally.
- The disqualification appears in a way on his/her motor vehicle report (MVR) where any future employer could research and determine the cause of the disqualification. "INDEF DISQ:" CDL Disqualification GS 20-17.4(l) Statute: 20-17.4(l).
- The disqualification history remains on the MVR for a period of two years after DMV receives the satisfactory completion letter from the substance abuse assessment program.
- North Carolina requires the driver to receive help for his/her drug/alcohol problem. The driver must successfully complete a substance abuse assessment program prior to reinstatement of the commercial driving privilege. The law provides a motivation for the driver to address his/her substance abuse problem.

Program Costs:

The primary cost of implementation of the program involved changes to our mainframe application software, the State Automated Driver License System (SADLS). The changes included modifications to business rules addressing CDL drivers, suspension/disqualification rules, driver adjudication, and posting of information to the driver record. This turned out to be a programming project with an estimated cost of \$50,000 representing about 600 hours of programmer time.

Implementation of the program during the first 20 months has been minimal, given the benefits reaped from the program. The new law has required a maximum of 8 hours per week of time from a clerical staff person and a maximum of 8 hours per week from a hearing officer who hears the appeals.

The office where these records are kept is secure, allowing only limited access. Only the two employees mentioned above and the supervisor have access to this area.

The cost of personnel will grow as more employers learn that they must report positive results. North Carolina has had no media campaign to inform the motor carriers. The North Carolina Trucking Association, North Carolina Highway Patrol

Motor Carrier Section, and the Federal Motor Carrier Safety Administration Auditors, as well as the North Carolina CDL Compliance Auditors are informing the carriers of this new law as they travel across the state conducting audits. At this point, we cannot be certain that all positive drug test results or refusals are being reported to us. Our goal is to get the word out to employers so we can have 100 percent compliance.

Future Upgrade Costs:

As mentioned earlier in this written testimony, much of the data we collect is collected manually. Unfortunately, we have many reasons to believe that the positive drug test reporting in North Carolina has only scratched the surface.

We are looking at ways to automate and enhance the collection of data to provide us with monthly reports which will give us detailed information on the positive drug/alcohol data that will be beneficial to helping our agency and other state and federal agencies to fight this dangerous problem.

The upgrades include adding a new screen to the Adjudication Conviction Maintenance area.

This new screen will display standard demographic information including, Name, Customer ID, SSN, and DOB. Some areas will be pre-filled with data from the most recent issuance, including license type, license class, issue date, expiration date, and endorsements.

The new screen will have the following data items on it:

- Type of Drugs: Amphetamines, Cocaine, Opiates, Cannabinoids and Phencyclidine.
- Type of Test: Alcohol or Drug.
- If alcohol, a BAC level must be entered on the screen.
- Refusal Indicator: Y or N with default to No. If the refusal is marked "Y" the system will have a cross edit on location of refusal, either at the company or lab.
- Reason for Test: Pre-employment, Random, Reasonable Suspicion, Post-Accident, Return to Duty, Follow-up.
- Company Name: Allow this to be a free text field, all caps (It will cross check IRP system).
- Company Address: Allow this to be free text field, all caps (cross check

with IRP system).

- Company phone number: Allow this to be free text field.
- Company Contact Person: Allow this to be free text field.
- County of Employer: Allow this to be free text field.

Monthly Statistical reports will be created. There will be multiple reports. The report data will include:

- What drugs were involved.
- Type of company.
- Test reason (pre-employment included).
- Refusal or positive test.
- Endorsements: how many and what type.
- County of employer.
- What school system.

SADLS will need to add new database tables, PDF files, create new screens, and many new programs to accomplish enhanced functionality.

We will be able to collect all data we currently collect and all of the above new data electronically. All data and information is private and confidential.

To accomplish this and capture the data needed to maximize our efforts with the Positive Drug Test Program will cost an estimated \$153,360.00.

Conclusion:

The positive drug testing law, including the original legislation and the recently enacted enhancements, have provided inestimable benefits to highway safety at a minimum of cost to the taxpayers. In just 20 months, North Carolina has disqualified more than 500 commercial drivers who previously might have failed a drug test and turned right around and resumed driving for another carrier within weeks. The impact alone on protecting our school children from school bus drivers with substance abuse problems is well worth the minimal resources required for the program. In addition to the benefits to highway safety, we have to

consider the benefits to our society from providing an incentive to the drivers with a substance abuse problem who, for the first time, are given an incentive to receive treatment and address their problems.