

**SUBJECT:** Reporting alcohol and drug test outcomes of commercial drivers

**COMMITTEE:** Law Enforcement — committee substitute recommended

**VOTE:** 6 ayes — Driver, Jackson, Burnam, Frost, Hegar, Veasey  
0 nays  
1 absent — Hupp

**WITNESSES:** For — Les Findeisen, Texas Motor Transportation Association  
Against — None  
On — Dallas Hutton, Texas Department of Public Safety, Motor Carrier Bureau

**BACKGROUND:** Title 49 C.F.R., sec. 382 is the federal transportation regulation that provides requirements and guidelines for alcohol and controlled substance testing for those in possession of a commercial driver’s license. Drivers must undergo pre-employment drug testing as well as drug and alcohol testing following accidents and in cases where the employer has probable cause. Each year, motor carriers also must perform random drug testing on 50 percent of their commercially licensed drivers and random alcohol testing on 10 percent of their drivers.

In 2003, the 78th Legislature enacted SB 1904 by Barrientos, which requires that motor carriers report to the Department of Public Safety (DPS) when one of their employees tests positive on a controlled substance test. A positive result is defined as exceeding the cutoff concentration levels in 49 C.F.R., sec. 40.87 for drugs in five different drug panels. Before hiring a new employee, if the applicant signs a release, DPS may provide the potential employer with information regarding the applicant’s history of any positive results from controlled substance testing.

The reporting requirements created by SB 1904 pertain only to employees of motor carriers required to register with the Texas Department of Transportation under Transportation Code, ch. 643.

DIGEST:

CSHB 807 would repeal Transportation Code, sec. 643.064, which requires the reporting of positive drug test results to DPS. The bill would replace the substance of this deleted section with a new subchapter F in chapter 644, which would require reporting of positive alcohol test results while maintaining current reporting requirements for controlled substance test results.

Employers would have to report alcohol test results at or exceeding a blood alcohol concentration of .04. In addition to positive test results, employers also would have to report when an employee refused to provide a specimen for sampling or provided a specimen that had been substituted or adulterated.

The bill also would expand reporting requirements to include all employees who hold a commercial driver's license, not just employees of a registered motor carrier.

The bill would take effect September 1, 2005.

SUPPORTERS  
SAY:

CSHB 807 is a crucial measure to enhance public safety. Commercial vehicles are particularly dangerous when involved in accidents because they often are much larger than other vehicles on the roadway or contain hazardous materials. Providing employers access to test results would help them make informed hiring decisions based on whether or not job applicants historically have engaged in safe driving practices. This would not infringe on an applicant's privacy, because an individual still must sign a waiver before the DPS will release any records.

The provisions of this bill would not be difficult to implement because federal regulations already require drug and alcohol testing. Reporting the results of these tests would require only that employers mail one form to DPS.

CSHB 807 would build on the positive outcomes that have emerged from the enactment of SB 1904. Since last session, more than 3,500 positive results have been reported to DPS, and the total number of accidents involving commercial vehicles has decreased. Alcohol is involved in commercial vehicle accidents at a rate 10 times that of drug-related accidents, so expansion to positive alcohol test reporting has an even greater potential to reduce the number of these accidents. In addition, all

commercial license holders, including school bus drivers and those operating other large passenger transport vehicles, would be subject to reporting requirements under this bill.

OPPONENTS  
SAY:

While the total number of accidents involving commercial vehicles may have declined since 2003, this cannot be attributed to SB 1904. In fact, the number of *drug-related* accidents has not changed significantly over the past two years, and these accidents actually have increased as a percentage of total accidents. Based on these data, there is no evidence to suggest that CSHB 807 further would reduce the incidence rate of alcohol-related commercial vehicle accidents.

Given this lack of evidence, there is no justification for the discriminatory hiring practices that would occur based upon an employer discovering a positive test result in an applicant's history. Although a job applicant could refuse to sign the release, the employer still could use the refusal as a basis for not hiring a candidate. Use of this sort of information generally reflects a presumption that an individual cannot learn from past mistakes and potentially could face detrimental impacts to his or her career.

NOTES:

The committee substitute differs from the original bill in that it would expand the reporting requirements to include refusal to provide a specimen or providing a specimen that has been substituted or adulterated.

The companion bill, SB 217 by Shapiro, passed the Senate on the Local and Uncontested Calendar on March 17 and was reported favorably, as substituted, by the House Law Enforcement Committee on April 7, making it eligible to be considered in lieu of HB 807.