



FEDERAL PROHIBITION ON "MASKING" TRAFFIC VIOLATIONS COMMITTED BY COMMERCIAL DRIVER'S LICENSE HOLDERS

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WHY DID THE LEGISLATURE CHANGE?

Connecticut law allows most motorists charged for the first time, and some charged subsequently, with driving under the influence to have the charge dismissed if they successfully complete an alcohol education program. But the law changed in 2013 to prohibit commercial truck or bus drivers from taking part in the program, regardless of the type of vehicle they were driving when the offense occurred.

The legislature changed the law to comply with federal regulations, which prohibit states from allowing truck and bus drivers from taking part in any program that disguises, or

ISSUE

This report examines why the legislature enacted a law in 2013 declaring all holders of Commercial Driver's Licenses (CDLs) or commercial driver instruction permits charged with driving under the influence (DUI) ineligible for the Pretrial Alcohol Education Program. It explains how this legislation relates to federal regulations that prohibit the "masking" of traffic law violations.

SUMMARY

The legislature enacted [PA 13-271](#), in part, to conform state law to federal regulations. Section 44 of the act, codified as [CGS § 54-56g\(h\)](#), makes holders of CDLs or commercial driver's instruction permits charged with DUI ineligible for the Pretrial Alcohol Education Program, regardless of whether the CDL or permit holder was driving a commercial motor vehicle (large truck or bus) at the time of the offense. (Under state law in effect at the time, a person driving a truck or bus when a DUI offense occurred was already ineligible for the program.)

The Pretrial Alcohol Education Program allows the dismissal of DUI charges against a defendant who successfully completes the program, a practice the Federal Motor Carrier Safety Administration (FMCSA) refers to as "masking." FMCSA maintains



that such a dismissal serves to disguise a CDL holder's safety record and defeats the purpose of a uniform, nationwide licensing and regulatory process.

The Department of Motor Vehicles (DMV) commissioner, testifying before the Transportation Committee, requested that the legislature change the law to comply with the federal regulations. The commissioner told committee members that failure to adopt the legislation could result in the loss of federal highway funds.

Section 43 of [PA 13-271](#) makes a corresponding change barring holders of CDLs or commercial driver's instruction permits who commit any motor vehicle violation from participating in the accelerated rehabilitation pre-trial diversion program.

BACKGROUND

Commercial Driver's License (CDL) Requirements

FMCSA requires drivers to hold a valid CDL if they drive large trucks or buses (trucks weighing more than 26,001 pounds or buses carrying at least 16 passengers) in interstate, intrastate, or foreign commerce.

Connecticut, as does every state, issues its own CDL ([CGS § 14-44](#) et seq.). However, CDL holders must meet federal testing and licensing standards and states must comply with federal CDL laws and regulations. A state's failure to comply with those regulations may result in the loss of federal highway funds.

Pretrial Alcohol Education Program

The Pretrial Alcohol Education Program is one of several state diversionary programs. It allows certain offenders to avoid a criminal record. By law, a driver may apply for admission to the Pretrial Alcohol Education Program if he or she is charged with DUI (1) for the first time or (2) a subsequent time and he or she has no prior convictions of certain alcohol-related driving or boating crimes and had not used the program in the previous 10 years.

The court must seal the case file when the application is made. If the court grants the application, it must refer the motorist to the (1) Judicial Branch's Court Support Services Division for assessment and confirmation of his or her eligibility and (2) Department of Mental Health and Addiction Services (DMHAS) for evaluation. Upon confirmation of eligibility, the person is referred to DMHAS for placement in either an appropriate one-year alcohol intervention program or a state-licensed substance abuse treatment program. The court must dismiss the DUI charge if the defendant satisfactorily completes the assigned program and he or she requests dismissal ([CGS § 54-56g](#), as amended by [PA 15-211](#) (§ 11)).

Before 2013, state law barred from the program drivers who were operating a truck or bus when charged with DUI. But until enactment of [PA 13-271](#), CDL and commercial driver instruction permit holders charged with DUI while driving a non-commercial motor vehicle (e.g., a personal or family vehicle) were still eligible if they met the other program requirements.

A UNIFORM LICENSING AND REGULATORY SYSTEM AND "MASKING"

The federal government created the CDL system, in part, to reduce the number of truck and bus accidents and remove unqualified truck and bus drivers from the road. To identify dangerous drivers, states must have accurate and timely information about the driving history of CDL holders.

Masking Prohibition

To help ensure that driver records are accurate, FMCSA regulations prohibit "masking," which occurs when a court allows the conviction of a CDL holder for a traffic violation "to be deferred, dismissed, or go unreported."

The anti-masking regulation states:

"The state must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a...CDL holder's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law...from appearing on the...driver record, whether the driver was convicted for an offense committed in the state where the driver is licensed or another state" (49 CFR 384.226).

According to FMCSA, Connecticut's Pretrial Alcohol Education Program masks the record of a CDL or commercial driver's instruction permit by dismissing a DUI charge.

"The purpose of the anti-masking...rule," states *Commercial Drivers' Licenses: A Prosecutor's Guide to the Basics of Commercial Motor Vehicle Licensing and Violations*, "is to ensure that licensing authorities have an accurate picture of a CDL holder's driving history. The increased penalties for multiple violations work to disqualify unsafe drivers. The only tool courts and prosecutors have to determine how serious a driver's pattern of traffic violations has been is the official driver's history. If that history is artificially preserved one time, or over and over again, the next prosecutor or judge has no way to know."

Penalties

FMCSA may penalize states that fail to comply with the federal regulations. Among other things, states may lose portions of their federal aid highway funds or the ability to issue CDLs (49 CFR 384.401, 384.403 & 384.405).

DMV TESTIMONY ON THE NEED TO COMPLY WITH THE FEDERAL REGULATIONS

DMV Commissioner Melody Currey testified on March 8, 2013 before the Transportation Committee on HB 6495, later to become HB 6033 as amended, and eventually [PA 13-271](#). She told legislators that FMCSA had warned DMV that it could face federal financial penalties if the state did not bring its statutes in line with federal regulations.

The commissioner said that FMCSA had audited Connecticut's CDL program and determined that the Pretrial Alcohol Education Program violated the anti-masking regulation. "Connecticut has been warned that federal funding may be in serious jeopardy if we remain non-compliant," she told committee members.

According to a November 15, 2012 email from FMCSA to DMV (after the FMCSA audit but before the legislature approved HB 6033, the federal government could withhold 5% of Connecticut's federal highway funds in the first year after a finding of non-compliance, and 10% of this funding in the second and subsequent years after such a finding. FMCSA estimated the state could therefore lose between \$23 million and \$25 million in the first year of non-compliance and between \$46 million and \$50 million in the second and subsequent years.

RELATED CHANGE IN THE LAW

[PA 13-271](#) (§ 43) made a corresponding change to the state's accelerated rehabilitation law ([CGS § 54-56e](#)). The act makes ineligible for the accelerated rehabilitation program anyone charged with a motor vehicle violation (1) while operating a commercial motor vehicle or (2) who held a CDL or commercial driver's instruction permit at the time the violation occurred, regardless of the type of vehicle he or she was driving at the time. Accelerated rehabilitation is a pretrial diversion program for people accused of crimes and motor vehicle violations that are (1) punishable by a prison term and (2) not of a serious nature.

LINK

Commercial Driver's Licenses: A Prosecutor's Guide to the Basics of Commercial Motor Vehicle Licensing and Violations: <http://www.ndaa.org/pdf/CDL%20Monograph.pdf>.

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