The Vermont Legislative Research Service

Contact: Professor Anthony Gierzynski
517 Old Mill, Burlington, VT 05405-4110, Telephone (802) 656-7973, Fax (802) 656-0758
http://www.uvm.edu/~vlrs/ • E-mail: Anthony.Gierzynski@uvm.edu

Bus Drivers and DUI Policy

The following report will begin by examining federal and state statutes pertaining to commercial drivers license ("CDL") suspension periods for bus drivers convicted of driving under the influence ("DUI"). The report will then look at DUI policies set forth by private bus companies in Vermont. The report concludes by looking at state expungement statutes for persons convicted of a DUI with a CDL.

Federal Statutes

The Federal Motor Carrier Safety Administration (FMCSA) enacted the 1999 Motor Carrier Safety Improvement Act (MCSIA), which set a minimum one-year suspension period for individuals with commercial driver's licenses (CDLs) who are found operating a commercial motor vehicle (CMV) with a blood alcohol concentration (BAC) of 0.04 or greater.[1] According to the MCSIA, driving a CMV while under the influence of alcohol means committing any one or more of the following acts:

> (a) Driving a CMV while the person's alcohol concentration is 0.04 or more; (b) Driving under the influence of alcohol, as prescribed by State law; or (c) Refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of § 383.51(b) or § 392.5(a)(2).[2]

[1] Department of Transportation Federal Motor Carrier Safety Administration, "Commercial Driver's License Standards, Requirements, and Penalties; Commercial Driver's License Program Improvements and Noncommercial Motor Vehicle Violations," Federal Register Vol. 67, No. 147 (July 31, 2002): 49742, accessed March 30, 2015, http://www.gpo.gov/fdsys/pkg/FR-2002-07-31/pdf/02-18457.pdf.
[2] Department of Transportation Federal Motor Carrier Safety Administration, "Commercial Driver's License Standards, Requirements, and Penalties; Commercial Driver's License Program Improvements and Noncommercial Motor Vehicle Violations."

However, the FMCSA only has the authority to establish a minimum alcohol concentration (0.04%) disqualification standard for CDL drivers.[3] Individual states can impose more stringent standards, including establishing a lower alcohol concentration, for both CDL and non-CDL drivers licensed by their State.[4]

Vermont Statutes

The Vermont Commercial Driver License Act (CDLA) says, "(a) A person shall be disqualified from driving a commercial motor vehicle for a period of one year if convicted of a first violation of: (1) operating, attempting to operate, or being in actual control of a commercial motor vehicle on a highway with an alcohol concentration of 0.04 or more," within the past two years, from obtaining a school bus endorsement.[5]

Private Companies in Vermont

Vermont requires that, "during the two-year period immediately prior to applying for school bus endorsement, the applicant: (C.) Has not been convicted of any offense that would require disqualification under section 4116 of this title…."[6] Section 4116 states, "A person shall be disqualified from driving a commercial motor vehicle for a period of one year if convicted of a first violation of: (1) operating, attempting to operate or being in actual physical control of a motor vehicle with an alcohol concentration of 0.04% or more."[7]

Most of the bus companies we contacted required background checks to go back farther than two years. For example, Bet-Cha Transit in Middlebury said, "if you have ever had a DUI at any point in your lifetime, we are unable to hire you. If you are convicted during your employment, it will result in in immediate termination of employment."[8] Grand Avenue Enterprises Inc. in Swanton, explained that their "insurance company won't cover drivers who have been convicted of DUI."[9] Mountain Transit Inc. in Milton conducts "a ten year criminal background check and people are not hired if they have been convicted of a DUI. To be considered for employment, a DUI conviction must be at least fifteen years

[3] Transportation Series, "Traffic Safety and Public Health: State Legislative Action 2010," National Conference of State Legislatures, No. 35, December 2010, accessed March 30, 2015, http://www.ncsl.org/documents/transportation/2010trafficsafety.pdf.
[4] Transportation Series, "Traffic Safety and Public Health: State Legislative Action 2010."
[5] Vermont Statutes, Title 23: Motor Vehicles Chapter 39: Commercial Driver License Act Section 4121, "Applicants for School Bus Endorsements," Vermont General Assembly, accessed March 30, 2015, http://legislature.vermont.gov/statutes/fullchapter/23/039.
[6] Vermont Statutes, Title 23: Motor Vehicles Chapter 39: Commercial Driver License Act Section 4121, "Applicants for School Bus Endorsements."
[7] Vermont Statutes, Title 23: Motor Vehicles Chapter 39: Commercial Driver License Act Section 4116, "Disqualification."
[8] D. Lamoureux, Bet-Cha Transit Office Manager, "Personal Communication," March 27, 2015.
[9] Mike Vegnoche, Grand Avenue Enterprises Incorporated Owner, "Personal Communication," March 27, 2015.

old."[10] Dufour Inc. in Bennington said, "Hiring is situationally dependent in regards to people who have been convicted of DUI."[11]

State Expungement Statutes

The subsequent section highlights DUI expungement policies enacted by several states. Expungement policies vary by state. Kansas, for example, does not allow expungement.[12] First offenders convicted of DUI in Rhode Island, however, are given option to file expungement.[13] Ultimately, DUI expungement statutes are subject to the way individual states classify DUI offenses.[14]

Arizona

Arizona offers expungement to "any person who is wrongfully arrested, indicted or otherwise for any crime."[15] A person must petition the court for expungement of certain records, upon which a judge will hear that person's case. "If the judge believes that justice will be served by such entry, the judge shall issue the order requiring the entry that the person has been cleared on such records."[16] Furthermore, the expungement ruling "requires that all law enforcement agencies and courts shall not release copies of or provide access to such records to any person except on order of the court."[17]

Connecticut

In Connecticut "upon the first DUI conviction, a school bus driver is disqualified from driving any commercial vehicle for a year and his or her S endorsement is suspended for

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[10] Marty McRae, Mountain Transit Incorporated Driver Trainer, "Personal Communication," March 27, 2015.
[11] Mike Gardener, Dufour Incorporated Manager, "Personal Communication," March 27, 2015.
[12] Kansas Statutes, Chapter 12: Cities and Municipalities: Article 45: Code for Municipal Courts; Trials and Proceedings Incident Thereto: Section 12-4516b, "Expungement of Certain Convictions, Arrest Records and Diversion Agreements," Kansas State Legislature, accessed April 3, 2015, http://kslegislature.org/li/b2015_16/statute/008_000_0000_chapter/008_002_0000_article/008_002_0144_section/008_002_0144_k/.
[13] Rhode Island Statutes, Title 12: Criminal Procedure Chapter 1.3 Expungement of Criminal Records Section 2, "Motion for Expungement" Rhode Island General Assembly, 1993. Accessed April 6, 2015, http://webserver.rilin.state.ri.us/Statutes/TITLE12/12-1.3/12-1.3-2.HTM.
[14] Anne Teigen, "Criminal Status of State Drunken Driving Laws," National Conference of State Legislatures, April 24, 2014 accessed, April 13, 2015, http://www.ncsl.org/research/transportation/criminal-status-of-state-drunk-driving-laws.aspx.
[15] Arizona Revised Statutes, Title 13: Criminal Code: Chapter 38: Miscellaneous: Article 19: Entry of Clearance on Records: Section 13-4051A, "Entry on Records; Stipulation; Court Order," Arizona State Legislature, accessed April 6, 2015, http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/13/04051.htm&Title=13&DocType=ARS.
[16] Arizona Revised Statutes, Title 13: Criminal Code: Chapter 38: Miscellaneous: Article 19: Entry of Clearance on Records: Section 13-4051B, "Entry on Records; Stipulation; Court Order," Arizona State Legislature, accessed April 6, 2015, http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/13/04051.htm&Title=13&DocType=ARS.
[17] Arizona Revised Statutes, Title 13: Criminal Code: Chapter 38: Miscellaneous: Article 19: Entry of Clearance on Records: Section 13-4051B, "Entry on Records; Stipulation; Court Order."

five years."[18] Commercial drivers convicted of DUI are not eligible for Connecticut's Pretrial Alcohol Education Program (PAEP), which allows first time DUI offenders, upon completion of the program, request their DUI charge to be dismissed.[19] A second DUI conviction results in a lifetime suspension from holding a CDL, with the possibility of reinstatement after a clean record of ten years and the completion of necessary rehabilitation programs.[20] A third conviction results in the permanent lifetime CDL suspension without the possibility for reinstatement. [21]

Indiana

In Indiana "it is illegal to operate a CMV if your BAC is .04 percent or more. If you operate a CMV, you shall be deemed to have given your consent to alcohol testing."[22] Drivers will lose their CDL for one year if they operate a CMV with a BAC of .04 percent or more, for a first offense.[23] Subsequent offenses result in a loss of the driver's CDL for life.[24] The Indiana Codes allow for expungement of a DUI, a class C misdemeanor,[25] "five years after the date of conviction."[26]

Kansas

The Kansas Statutes state, "[t]here shall be no expungement of convictions or diversions for a violation of a city ordinance which would also constitute a violation of Kansas Statute Article ["KSA"] 8-2,144."[27] KSA 8-2,144 states, "[d]riving a commercial motor vehicle under the influence is operating or attempting to operate any commercial motor vehicle . . . within this state while: (1) The alcohol concentration in the person's blood or breath, as shown by competent evidence . . . is .04 or more. (2) The alcohol concentration in the person's blood or breath, as measured within three hours of the time of driving a commercial motor vehicle, is .04 or more."[28]

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[18] Heather Poole, "School Bus Driver Licensing and DUI Suspensions," Connecticut Office of Legislative Research, September 26, 2014, accessed March 31, 2015, http://www.cga.ct.gov/2014/rpt/pdf/2014-R-0241.pdf.
[19] Heather Poole, "School Bus Driver Licensing and DUI Suspensions."
[20] Heather Poole, "School Bus Driver Licensing and DUI Suspensions."
[21] Heather Poole, "School Bus Driver Licensing and DUI Suspensions."
[22] Indiana Bureau of Motor Vehicles, "Indiana Commercial Driver's License Test Booklet," accessed April 3, 2015, http://www.in.gov/dor/files/cdl.pdf.
[23] Indiana Bureau of Motor Vehicles, "Indiana Commercial Driver's License Test Booklet."
[24] Indiana Bureau of Motor Vehicles, "Indiana Commercial Driver's License Test Booklet."
[25] Indiana Codes, Title 9: Motor Vehicles: Article 30: General Penalty Provisions: Chapter 5: Operating a Vehicle While Intoxicated: Section 9-30-5-1, "Class C Misdemeanor, Defense," Indiana General Assembly, accessed April 3, 2015, https://iga.in.gov/legislative/laws/2014/ic/titles/009/.
[26] Indiana Codes, Title 35: Criminal Law and Procedures: Article 38: Proceedings Following Dismissal, Verdict, or Finding: Chapter 9, "Sealing and Expunging Conviction Records," Indiana General Assembly, accessed April 3, 2015, https://iga.in.gov/legislative/laws/2014/ic/titles/035/.
[27] Kansas Statutes, Chapter 12: Cities and Municipalities: Article 45: Code for Municipal Courts; Trials and Proceedings Incident Thereto: Section 12-4516b, "Expungement of Certain Convictions, Arrest Records and Diversion Agreements."
[28] Kansas Statutes, Chapter 8: Automobiles and Other Vehicles: Article 2: Driver's Licenses: Section 8-2,144, "Driving a Commercial Motor Vehicle Under the Influence; Penalties," Kansas State Legislature, accessed April

Missouri

Effective in January 2017, Missouri's Revised Statutes will allow for expungement of a DUI conviction from an individuals record "after a period of not less than ten years."[29] Upon expungement, the records pertaining to the individual will be made confidential, "and only available to the parties or by order of the court for good cause shown."[30] However, drivers with a CDL are not eligible to apply for expungement.[31]

Rhode Island

Rhode Island provides first offenders the opportunity to file expungement motions for felonies and misdemeanors.[32] Rhode Island allows expungement for any misdemeanor or felony, for a first time offense; expungement motions can be filed 5 years after the conviction of a misdemeanor and 10 years after a felony, respectively after the completion of the related sentence.[33]

South Dakota

In South Dakota, expungement is defined as "the sealing of all records on file within any court, detention or correctional facility, law enforcement agency, criminal justice agency, or Department of Public Safety concerning a person's detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system."[34] The arrested person may apply for expungement (of the record of arrest):

> (1) After one year from the date of any arrest if no accusatory instrument was filed;
> (2) With the consent of the prosecuting attorney at any time after the prosecuting

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3, 2015, http://kslegislature.org/li/b2015_16/statute/008_000_0000_chapter/008_002_0000_article/008_002_0144_section/008_002_0144_k/.

[29] Missouri Revised Statutes, Title 39: Conduct of Public Business: Chapter 610: Governmental Bodies and Records: Section 610.130.1, "Alcohol-related Driving Offenses, Expunged From Records, When—Procedures, Effect—Limitations," Missouri General Assembly, August 28, 2014, accessed April 2, 2015, http://www.moga.mo.gov/mostatutes/stathtml/61000001301.html.

[30] Missouri Revised Statutes, Title 39: Conduct of Public Business: Chapter 610: Governmental Bodies and Records: Section 610.130.3, "Alcohol-related Driving Offenses, Expunged From Records, When—Procedures, Effect—Limitations."

[31] Missouri Revised Statutes, Title 39: Conduct of Public Business: Chapter 610: Governmental Bodies and Records: Section 610.130.4, "Alcohol-related Driving Offenses, Expunged From Records, When—Procedures, Effect—Limitations."

[32] Rhode Island Statutes, Title 12: Criminal Procedure Chapter 1.3 Expungement of Criminal Records Section 2, "Motion for Expungement."

[33] Rhode Island Statutes, Title 12: Criminal Procedure Chapter 1.3 Expungement of Criminal Records Section 2, "Motion for Expungement."

[34] South Dakota Codified Laws, Title 23A: Criminal Procedure: Chapter 3: (Rule 4.1) Arrest: Section 23A-3-26, "Definition of Expungement," accessed April 3, 2015, http://legis.sd.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=23A-3-26.

attorney formally dismisses the entire criminal case on the record; or (3) At any time after an acquittal.[35]

Tennessee

Four or more DUI offenses, in Tennessee, are categorized as a Class E Felony, while lesser offenses are considered a misdemeanor.[36] If there was a conviction for a misdemeanor or Class E Felony, the charge or charges may be eligible for expungement.[37] Once an expungement is completed, the Tennessee Bureau of Investigation ("TBI") will erase all charges from a criminal record, meaning the record will not be sealed. [38] However, it is still possible for convictions to appear on background checks run by private companies.[39]

Utah

Effective March 13, 2014, Utah no longer allows for the expungement of felony DUI convictions.[40] First and second DUI offenses over a period of ten years are considered misdemeanors, while three or more offenses over that same period are considered felonies.[41]

Conclusion

Although Vermont statutes prevent individuals convicted of DUIs within the past two years from obtaining a bus endorsement[42] many private companies have stricter policies regarding hiring people who have been convicted of DUI. For example, Mountain Transit Incorporated conducts "a ten year criminal background check and people are not hired if they have been convicted of a DUI. To be considered for employment, a DUI conviction must be at least fifteen years old."[43] The aforementioned states have enacted statutes

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[35] South Dakota Codified Laws, Title 23A: Criminal Procedure: Chapter 3: (Rule 4.1) Arrest: Section 23A-3-27, "Motion for Expungement of Arrest Record," accessed April 3, 2015, http://legis.sd.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=23A-3-27.
[36] Tennessee Statutes, Title 55: Motor and Other Vehicles: Chapter 10: Accidents, Arrests, Crimes and Penalties: Section 402, "Penalty for Violation of Section 55-10-401 – Alternative Facilities for Incarceration – Public Service Work – Inpatient Alcohol and Drug Treatment," accessed April 6, 2015, www.lexisnexis.com/hottopics/tncode/.
[37] Tennessee Bureau of Investigation, "Frequently Asked Questions – Expungements," accessed April 2, 2015, http://www.tbi.tn.gov/background_checks/Expungement-FAQ.pdf.
[38] Tennessee Bureau of Investigation, "Frequently Asked Questions – Expungements."
[39] Tennessee Bureau of Investigation, "Frequently Asked Questions – Expungements."
[40] Utah Statues, Title 77: Utah Code of Criminal Procedure: Chapter 40: Utah Expungement Act: Section 105, "Eligibility for Expungement of Conviction – Requirements," Utah State Legislature, 2014, accessed April 3, 2015, http://le.utah.gov/xcode/Title77/Chapter40/77-40-S105.html?v=C77-40-S105_2014040320140513.
[41] Utah Sentencing Commission, "DUI Best Sentencing Practices Guidebook," accessed April 3, 2015, http://www.sentencing.utah.gov/DUI/DUI_BEST_PRACTICES.pdf.
[42] Vermont Statutes, Title 23: Motor Vehicles Chapter 39: Commercial Driver License Act Section 4121, "Applicants for School Bus Endorsements."
[43] Marty McRae, Mountain Transit Inc. Driver Trainer, "Personal Communication," March 27, 2015.

allowing for the expungement of one's record if convicted of a DUI; however, Vermont is not one of them.[44]

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Contact: Professor Anthony Gierzynski, 517 Old Mill, The University of Vermont, Burlington, VT 05405, phone 802-656-7973, email agierzyn@uvm.edu.

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[44] Vermont Statutes, Title 13: Crimes and Criminal Procedure: Chapter 230, "Expungement and Sealing of Criminal History Records," Vermont General Assembly, accessed April 7, 2015, http://legislature.vermont.gov/statutes/chapter/13/230.