

A newsletter by **Taheri & Todoro**, P.C., devoted to Driving While Intoxicated law in New York State  
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## **Attention Truck Drivers! Change in DWI Law Eliminates Commercial Driver License**

For those who need a commercial driver license for their employment, a recent change in the DWI law will effectively eliminate their ability to remain employed.

Prior to September 30, 2005, Vehicle and Traffic Law section 1196[7](g) barred the operation of a commercial motor vehicle while using the conditional license commonly issued to first time violators of Vehicle and Traffic Law section 1192. In cases where the driver was not actually operating a commercial motor vehicle at the time of his or her arrest for DWI, however, many courts were concerned about the impact this restriction would have on, for example, truck drivers who would be unable to support their families without a commercial driver license. As a result, this restriction was frequently overcome by having the sentencing judge execute a Certificate of Relief from Disabilities pursuant to Corrections Law section 702, "Certificates of relief from disabilities issued by courts." The court would provide such a certificate to the defendant stating that he or she could use the conditional license to operate a commercial motor vehicle. The defendant would then submit the certificate to the Department of Motor Vehicles. If the document was properly completed, the Department of Motor Vehicle would then approve it.

Effective September 30, 2005, section 1196[7](g) of the New York State Vehicle and Traffic Law was changed to eliminate the ability of drivers using conditional licenses to continue operating commercial motor vehicles. It now reads as follows:

Notwithstanding anything to the contrary contained in a certificate of relief from disabilities issued pursuant to article twenty-three of the correction law, any conditional license or privilege issued to a person convicted of a violation of any subdivision of section eleven hundred ninety-two of this article shall not be valid for the operation of any commercial motor vehicle. In addition, no such conditional license or privilege shall be valid for the operation of a taxicab as defined in this chapter.

As a result, even if a driver were not driving a commercial motor vehicle at the time of his or her arrest, that driver will still be *barred* from holding a Commercial Driver License should he or she be convicted of any alcohol-related driving offense under Vehicle and Traffic Law section 1192.

The Department of Motor Vehicles has confirmed that Certificates of Relief from Disabilities issued to drivers who held a conditional license prior to September 30, 2005 will continue to be valid. With regard to those convicted after that date, however, the DMV is not aware of *any* method of allowing them to continue driving a commercial motor vehicle.

Obviously, this law could seriously impact the employment of many CDL holders. Defense attorneys *must* make such clients aware of this new regulation during their intake interview. The Courts, prosecutors and members of law

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enforcement must also consider the implications of this new regulation. Because a conviction for *any* provision of Vehicle and Traffic Law section 1192 is likely to result in such individuals losing their jobs, it is anticipated that more trials will be conducted in these cases, even when the driver may be eligible for a plea to the lesser charge of Driving While Ability Impaired by Alcohol (Vehicle and Traffic Law section 1192[1]). Faced with probable job loss, such drivers may wish to “roll the dice” and proceed to trial with the hope that the evidence presented at trial or a procedural error will lead to acquittal of all alcohol-related charges.

### **Other changes involving Commercial Motor Vehicles**

A change was also made to Vehicle and Traffic Law section 1193[2](b)(5), which sets forth the length of driver license revocation for various alcohol-related offenses. Prior to September 30, 2005, this statute read in relevant part:

Commercial motor vehicles. (i) Except as otherwise provided in this subparagraph, one year where the holder is convicted of a violation of any subdivision of section eleven hundred ninety-two of this article, such violation was committed while the holder was operating a commercial motor vehicle and the holder is sentenced pursuant to subparagraph two of paragraph (d) of subdivision one of this section.

The new version of this statute reads:

Holder of a commercial driver's license. (i) Except as otherwise provided in this subparagraph, one year where the holder of a commercial driver's license is convicted of a violation of any subdivision of section eleven hundred ninety-two of this article and the holder is sentenced pursuant to subparagraph two of paragraph (d) of subdivision one of this section.

On its face, these changes (e.g., the elimination of the phrase “such violation was committed while the holder was operating a commercial motor vehicle”) would appear to have been enacted to provide for the revocation of a commercial driver license for one year, regardless of whether the holder was operating a commercial motor vehicle at the time of arrest or not. However, Vehicle and Traffic Law section 1193[1](d)(2), which is referenced in both versions of this statute, specifically states that it only applies when the driver was operating a commercial motor vehicle or a vehicle registrable under Vehicle and Traffic Law section 401(7)(F) (which mainly applies to construction equipment). As a result, it does not appear that this change will have a substantial impact on CDL holders at this time.

This newsletter does not offer specific legal advice. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. If you have any questions or would like a specific topic covered in the newsletter, please contact Michael S. Taheri, Esq., or Peter J. Todoro, Esq., at Taheri & Todoro, PC, 388 Evans Street, Williamsville, NY 14221, telephone no. (716) 633-0374, e-mail: [lawyers@taheriantodoro.com](mailto:lawyers@taheriantodoro.com).

Edited by James F. Orr

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