

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1189 Commercial Motor Vehicles
SPONSOR(S): Payne
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	10 Y, 0 N	Roth	Vickers
2) Appropriations Committee	18 Y, 0 N	Cobb	Leznoff
3) Government Accountability Committee			

SUMMARY ANALYSIS

This bill revises numerous provisions relating to commercial motor vehicles (CMV). In summary, the bill:

- Updates various CMV regulations to address compatibility concerns with federal law.
- Provides that certain CMV regulations do not apply to covered farm vehicles.
- Removes exceptions regarding the visibility of headlamps and turn signals by waste collection vehicles under specified circumstances.
- Provides an effective date for certain requirements relating to the use of electronic logging devices and hours of service support documents.
- Removes language requiring intrastate CMVs that are not carrying hazardous materials to comply with certain federal regulations providing maximum drive time requirements.
- Removes a duplicative \$100 fine for falsifying hours of service records.
- Removes a provision requiring a motor carrier to maintain documentation of driving times if a driver is not released from duty within 12 hours after arriving for duty.
- Conforms to federal law by adding the terms “gross vehicle weight rating” and “gross combined vehicle weight rating” and removing the provision regarding transporting petroleum products.
- Requires charter buses operating interstate to register as apportionable vehicles.
- Provides a date by which a vehicle that has an apportioned registration will be issued a license plate and a cab card.
- Provides that an apportionable license plate will be replaced every five years, that the registration period is every 12 months, that the validation sticker is \$28, and that the license plate may be replaced at no charge if it is damaged or worn.
- Provides that if an offender uses any type of device to defeat, block, disable, jam, or interfere with a GPS or similar system he or she commits grand theft in the first degree.

According to the Department of Highway Safety and Motor Vehicles (DHSMV), the bill will have a negative, but insignificant fiscal impact to state expenditures. Additionally, Classifying charter buses as apportionable vehicles may have an indeterminate impact to state revenues. See fiscal analysis for discussion.

The bill has an effective date of October 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Federal Motor Carrier Safety Administration Compatibility

Current Situation

The primary mission of the Federal Motor Carrier Safety Administration (FMCSA), within the United States Department of Transportation, is to prevent commercial motor vehicle-related fatalities and injuries.¹ In 2007, FMCSA presented to Florida a Motor Carrier Safety Assistance Program (MSCAP) review, which concluded that Florida Statutes have multiple compatibility concerns with federal commercial motor vehicle (CMV) safety regulations.²

Florida law defines “commercial motor vehicle” as any self-propelled or towed vehicle used on public highways in commerce to transport passengers or cargo, if such vehicle:

- Has a gross vehicle weight rating of 10,000 pounds or more;
- Is designed to transport more than 15 passengers, including the driver; or
- Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act,³ as amended.⁴

Section 316.302(1)(a), F.S., provides that all owners and drivers of CMVs operating on the state’s public highways while engaged in *interstate* commerce are subject to the following parts of 49 C.F.R.:

Part	Heading
382	Controlled Substance and Alcohol Use Testing
385	Safety Fitness Procedures
390	Federal Motor Carrier Safety Regulations; General
391	Qualifications of Drivers and Longer Combination Vehicle Driver Instructors
392	Driving of Commercial Motor Vehicles
393	Parts and Accessories Necessary for Safe Operation
395	Hours of Service for Drivers
396	Inspection, Repair, and Maintenance
397	Transportation of Hazardous Materials; Driving and Parking Rules

Section 320.302(1)(b), F.S., provides that, with certain exceptions, all owners or drivers of CMVs engaged in *intrastate* commerce are subject to the following parts of 49 C.F.R. except as it relates to the definition of bus, as those rules and regulations existed on December 31, 2012:

Part	Heading
382	Controlled Substance and Alcohol Use Testing
383	Commercial Driver’s License Standards; Requirements and Testing
385	Safety Fitness Procedures
390	Federal Motor Carrier Safety Regulations; General
391	Qualifications of Drivers and Longer Combination Vehicle Driver Instructors
392	Driving of Commercial Motor Vehicles
393	Parts and Accessories Necessary for Safe Operation
395	Hours of Service for Drivers
396	Inspection, Repair, and Maintenance

¹ Federal Motor Carrier Safety Administration, available at <https://www.fmcsa.dot.gov/mission/about-us> (last visited January 11, 2018).

² 2007 Florida State MSCAP Review (Copy on file with Transportation & Infrastructure Subcommittee).

³ 49 U.S.C. ss. 1801 et seq.

⁴ Section 316.003(12), F.S.

Part	Heading
397	Transportation of Hazardous Materials; Driving and Parking Rules

Federal regulations define “bus” as “any motor vehicle designed, constructed, and/or used for the transportation of passengers, including taxicabs.”⁵ In its 2007 review, FMCSA found that Florida’s exemption for taxicabs was not compatible with federal regulations, which includes taxicabs in the definition of “bus.”⁶

In its 2007 review, FMCSA also found that the statutory provision exempting trucks transporting solid waste and recyclable materials with specified mechanisms operating at speeds of less than 20 miles per hour from certain lighting provisions is incompatible with federal regulations,⁷ which does not contain a similar exemption and that federal regulations expressly prohibit lamps and reflectors from being obscured.⁸

Federal regulations provide that with some exceptions, CMV drivers are required to be at least 21 years of age.⁹ Federal regulations also provide maximum drive time requirements for property carrying vehicles.¹⁰ Section 316.302(2)(a), F.S., provides that a person operating a CMV solely in intrastate commerce and not transporting any hazardous material in amounts that require placarding¹¹ are not required to comply with the above-referenced federal regulations.

Federal regulations provide hours of service rules for CMV drivers.¹² Florida law also provides that, except as provided in federal regulations, a person operating a CMV solely in intrastate commerce and not transporting any hazardous material may not drive:

- More than 12 hours following 10 consecutive hours off duty; or
- For any period after the end of the 16th hour after coming on duty following 10 consecutive hours off duty.¹³

These provisions do not apply to drivers of utility service vehicles.¹⁴

Section 316.302(2)(c), F.S., provides that, except as provided in the federal hours of service rules,¹⁵ a person operating a CMV solely in intrastate commerce not transporting any hazardous material may not drive after having been on duty more than 70 hours in any period of seven consecutive days or more than 80 hours in any period of eight consecutive days if the motor carrier operates every day of the week. Upon request of the Department of Highway Safety and Motor Vehicles (DHSMV), motor carriers are required to furnish time records or other written verification so that DHSMV can determine compliance with the hours of service requirements. Falsification of time records is subject to a civil penalty not to exceed \$100.

⁵ 49 C.F.R. 390.5.

⁶ *Supra* FN 2 at FL/FI-1.

⁷ 49 C.F.R. 393 Subpart B.

⁸ *Supra* FN 2 at FL/FI-7.

⁹ 49 C.F.R. s. 391.11(b)(1).

¹⁰ 49 C.F.R. s. 395.3(a) and (b).

¹¹ Placarding is required pursuant to 49 C.F.R. part 172. In this analysis, everywhere there is a discussion regarding the transportation of hazardous materials, it is assumed to be in amounts that require placarding.

¹² 49 C.F.R. s. 395.

¹³ Section 316.302(2)(b), F.S.

¹⁴ 49 C.F.R. s. 395.2, defines “utility service vehicle” as any commercial motor vehicle:

(1) Used in the furtherance of repairing, maintaining, or operating any structures or any other physical facilities necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service;

(2) While engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider); and

(3) Except for any occasional emergency use, operated primarily within the service area of a utility’s subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility.

¹⁵ 49 C.F.R. s. 395.1.

Section 316.302(2)(d), F.S., provides that a person operating a CMV solely in intrastate commerce not transporting any hazardous material within a 150 air-mile radius is not required to comply with federal provisions regarding a driver's record of duty status¹⁶ if the requirements of certain federal rules regarding short-haul operations¹⁷ are met. If a driver is not released from duty within 12 hours after the driver arrives for duty, the motor carrier must maintain documentation of the driver's driving times throughout the duty period.

Section 316.302(2)(f), F.S., provides that a person who is operating a CMV having a declared gross vehicle weight of less than 26,001 pounds operating solely in intrastate commerce and who is not transporting hazardous materials or who is transporting petroleum products¹⁸ is exempt from s. 316.302(1), F.S. However, such person must comply with 49 C.F.R. parts 382, 392, and 393, and with 49 C.F.R. ss. 396.3(a)(1) and 396.9.

In its 2007 findings, FMCSA determined that s. 316.302(2)(f), F.S., is not compatible with federal regulations since it exempts vehicles transporting petroleum products and the state definition of petroleum products includes liquids that could require placarding, while federal regulations do not allow drivers of vehicles requiring placarding to be exempt from applicable requirements.¹⁹

Proposed Changes

The bill amends various provisions of ss. 316.302(1) and (2), F.S., addressing issues related to Florida's CMV regulations and their incompatibility with federal law.

The bill provides that s. 316.302(1), F.S., applies to CMVs except as it relates to covered farm vehicles.²⁰ It amends s. 316.302(1)(b), F.S., removing the exception for the federal definition of a bus and updating the date of adoption to December 31, 2017, which updates the state law referencing the applicable federal rules applicable to intrastate CMV vehicles. The bill amends s. 316.302(1)(d), F.S., removing exceptions regarding headlamps and turn signals by waste collection vehicles under specified circumstances.

The bill creates s. 316.302(1)(e), F.S., providing that the requirement for electronic logging devices and hours of service support documents do not go into effect for motor carriers engaged in intrastate commerce and not carrying hazardous materials until December 31, 2019.

The bill amends s. 316.302(2)(a), F.S., no longer requiring intrastate CMVs that are not carrying hazardous materials to comply with certain federal regulations providing maximum drive time requirements. Therefore, these vehicles will not be required to comply with 49 C.F.R. 395.3, documenting the maximum driving time for operators of property carrying vehicles. These drivers continue to be subject to the maximum driving times required by state law.

¹⁶ 49 C.F.R. 395.8.

¹⁷ 49 C.F.R. s. 395.1(e)(1)(iii) and (v) are various rules relating to short-haul operations.

¹⁸ Section 376.301(33), F.S., defines "petroleum product" as "any liquid fuel commodity made from petroleum, including, but not limited to, all forms of fuel known or sold as diesel fuel, kerosene, all forms of fuel known or sold as gasoline, and fuels containing a mixture of gasoline and other products, excluding liquefied petroleum gas and American Society for Testing and Materials grades no. 5 and no. 6 residual oils, bunker C residual oils, intermediate fuel oils used for marine bunkering with a viscosity of 30 and higher, asphalt oils, and petrochemical feedstocks."

¹⁹ *Supra* FN 2 at FL/FI-3.

²⁰ Section 316.003(14), F.S., defines "covered farm vehicles" as a straight truck, or an articulated vehicle, which is all of the following:

- Registered in a state with a license plate, or any other designation issued by that state, which allows law enforcement officers to identify it as a farm vehicle.
- Operated by the owner or operator of a farm or ranch or by an employee or a family member of an owner or operator of a farm or ranch in accordance with s. 316.302(3)
- Used to transport agricultural commodities, livestock, machinery, or supplies to or from a farm or ranch.
- Not used in for-hire motor carrier operations; however, for-hire motor carrier operations do not include the operation of a vehicle meeting the requirements of paragraphs (a)-(c) by a tenant pursuant to a crop-share farm lease agreement to transport the landlord's portion of the crops under that agreement.

The bill amends s. 316.302(2)(c), F.S., by removing the \$100 fine for falsifying hours of service records, because it is duplicative of the fine provided in the CMV penalties statute.²¹

The bill amends s. 316.302(2)(d), F.S., adding a reference to 49 C.F.R. 395.1(e)(1)(ii) and (iii) (A) and (C) and removing the provision that a motor carrier is required to maintain documentation of the driver's driving times if a driver is not released from duty within 12 hours after arriving for duty.

The bill amends s. 316.302(2)(f), F.S., adding the terms "gross vehicle weight rating" and "gross combined vehicle weight rating" and removing the provision regarding transporting petroleum products to conform to federal law.

Apportionable Vehicles

Current Situation

The International Registration Plan (IRP) is a registration reciprocity agreement among all of the states in the continental United States, the District of Columbia, and certain Canadian provinces.²² The IRP allows a carrier to register once for all the jurisdictions, rather than dealing with each jurisdiction separately.²³ The IRP jurisdictions voted in favor of amending the definition of "apportionable vehicle," which went into effect on January 1, 2016. The amendment removed the exemption from IRP registration for charter buses. All charter buses operating interstate are now required to obtain IRP registration or purchase trip permits.²⁴

According to DHSMV, Congress has incentivized states to participate in the IRP by requiring participation as a condition for being able to establish, maintain, or enforce their own CMV registration laws and regulations which limit, within their own state, the operation of CMVs registered in another state.²⁵

Section 320.01(24), F.S., defines "apportionable vehicle" as any vehicle, except recreational vehicles, displaying restricted plates, city pickup and delivery vehicles, buses used in transportation of chartered parties, and government-owned vehicles, which is used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and:

- Is a power unit having a gross vehicle weight in excess of 26,000 pounds;
- Is a power unit having three or more axles, regardless of weight; or
- Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

Vehicles, or a combination of vehicles, with a gross vehicle weight of 26,000 pounds or less and two-axle vehicles may be proportionally registered.

Proposed Changes

The bill amends s. 320.01(24), F.S., removing the exception for charter buses from the definition of "apportionable vehicle." This will require charter buses operating interstate to register as apportionable vehicles. Pursuant to the revised IRP, all charter buses operating interstate are now required to obtain an IRP registration or purchase trip permits.

²¹ Section 316.3025(3)(b)1., F.S.

²² International Registration Plan, Inc., *About IRP*, available at <http://www.irponline.org/?page=AboutIRP> (last visited January 11, 2018).

²³ International Registration Plan, Inc., *IRP Registration*, available at <http://www.irponline.org/?page=Registration> (last visited January 11, 2018).

²⁴ Department of Highway Safety and Motor Vehicles, *2017 Legislative Concepts*, p. 2, available at https://www.flhsmv.gov/pdf/cabinetreports/legislative_concepts_2017.pdf (last visited January 11, 2018).

²⁵ Email from Department of Highway Safety and Motor Vehicles, February 16, 2017 (copy on file with Transportation & Infrastructure Subcommittee).

International Registration Plan

Current Situation

Florida law requires all apportionable vehicles domiciled in Florida to be registered in accordance with the IRP and to display required license plates.²⁶

Section 320.06, F.S., provides for motor vehicle registration certificates, license plates, and validation stickers. Upon receiving an initial application for registration and payment of the appropriate license tax²⁷ and other fees, DHSMV assigns the motor vehicle a registration license number and issues to the owner or lessee a certificate of registration and one license plate, unless two plates are required,²⁸ for each vehicle registered.²⁹

Most license plates are issued for a 10-year period. Upon renewal, the license plate is replaced. However, a vehicle with an apportioned³⁰ registration is issued an annual license plate and a cab card denoting the declared gross vehicle weight for each apportioned jurisdiction in which the vehicle is authorized to operate.³¹

Section 320.0607, F.S., provides for replacement license plates, validation decals, or mobile home stickers. It requires that upon the issuance of an original license plate, the applicant pay a fee of \$28 to be deposited into the Highway Safety Operating Trust Fund.

Proposed Changes

The bill amends s. 320.06(1)(b), F.S., providing that before October 1, 2019, a vehicle that has an apportioned registration will be issued a license plate and a cab card denoting the declared gross vehicle weight for each apportioned jurisdiction in which the vehicle is authorized to operate.

Additionally, it provides that beginning October 1, 2019, a vehicle registered in accordance with the IRP, will be issued a license plate for a five-year period, an annual cab card denoting the declared gross vehicle weight, and an annual validation sticker showing the month and year of expiration. The license plate and validation sticker will be issued based on the applicant's appropriate renewal period. The registration period for an apportionable vehicle is for 12 months and the validation sticker is good for 12 months. The annual fee for an original and renewed validation sticker is \$28, which is deposited into the Highway Safety Operating Trust Fund. If the license plate is damaged or worn it may be replaced at no charge by applying to DHSMV and surrendering the current license plate.

The bill amends s. 320.0607(5), F.S., providing that beginning October 1, 2019, the \$28 fee for a replacement license plate does not apply to vehicles registered under the IRP and issued an apportionable license plate.

Cargo Theft

Current Situation

Section 812.014(2)(a), F.S., provides penalties associated with commercial vehicle theft of cargo. An offender commits grand theft in the first degree³² if:

- The property stolen is valued at \$100,000 or more or is a semitrailer that was deployed by a law enforcement officer; or

²⁶ Section 320.0715(1), F.S.

²⁷ License taxes are provided for in s. 320.08, F.S.

²⁸ Section 320.0706, F.S., requires the display of license plates on the front and the rear of some trucks.

²⁹ Section 320.06(1)(a), F.S.

³⁰ Section 320.06(3)(a), F.S., requires apportioned license plate to have the word "apportioned" at the bottom of the license plate.

³¹ Section 320.06(1)(b)1., F.S.

³² Sections 775.082, 775.083, and 775.084, F.S., state that grand theft in the first degree is punishable as a felony of the first degree, which is a term of imprisonment not to exceed 30 years or a fine not to exceed \$10,000. Additionally, the person may be subject to enhanced penalties for certain habitual felony offenders

- Is cargo valued at \$50,000 or more that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock; or
- If the offender commits any grand theft and:
 - In the course of committing the offense the offender uses a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense and thereby damages the real property of another; or
 - In the course of committing the offense the offender causes damage to the real or personal property of another in excess of \$1,000.

The Florida Highway Patrol's (FHP) Bureau of Criminal Investigations and Intelligence within DHSMV investigates commercial vehicle and cargo theft and other forms of criminal activity related to DHSMV and FHP. The Bureau works with local, state, and federal partners in an effort to combat such activity.³³

Global positioning system (GPS) jammers are devices using radio frequency transmitters in order to intentionally block, jam, or interfere with a GPS. It is illegal to market, sell, or use GPS jammers in the United States.³⁴ Such devices have been linked to cargo thefts throughout the United States.³⁵

Proposed Changes

The bill provides that if in the course of committing an offense of theft an offender uses any type of device to defeat, block, disable, jam, or interfere with a GPS or similar system designed to identify the location of the cargo of the vehicle or trailer carrying the cargo, he or she commits grand theft in the first degree.

B. SECTION DIRECTORY:

Section 1: Amends s. 316.302, F.S., relating to commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.

Section 2: Amends s. 320.01, F.S., relating to definitions, general.

Section 3: Amends s. 320.06, F.S., relating to registration certificates, license plates, and validation stickers generally.

Section 4: Amends s. 320.0607, F.S., relating to replacement license plates, validation decal, or mobile home sticker.

Section 5: Amends s. 812.014, F.S., relating to theft.

Section 6: Provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Classifying charter buses as apportionable vehicles may change the registration fees for these vehicles; however, the actual impact for any specific vehicle will be based on motor vehicle details, jurisdictions where the vehicle travels, and the mileage percentages in each of the jurisdictions.

³³ Department of Highway Safety and Motor Vehicles, *Bureau of Criminal Investigation and Intelligence (BCII)*, available at <https://www.flhsmv.gov/florida-highway-patrol/specialized-areas/bureau-of-criminal-investigations-and-intelligence-bcii/> (last visited January 11, 2018).

³⁴ GPS.gov, *Information About GPS Jamming*, available at <http://www.gps.gov/spectrum/jamming/> (last visited January 11, 2018).

³⁵ Federal Bureau of Investigation, Private Industry Notification 141002-001, *Cargo Thieves use GPS Jammers to Mask GPS Trackers* (Oct. 2, 2014), available at <https://info.publicintelligence.net/FBI-CargoThievesGPS.pdf> (last visited January 11, 2018).

Because the details of these transactions cannot be quantified at this time, the revenue impact to the Highway Safety Operating Trust Fund is indeterminate.³⁶

2. Expenditures:

DHSMV estimates that 684 hours, or approximately \$35,940 in FTE and contracted resources will be required for programming and implementation of the specialty license plate. This cost can be absorbed within existing resources.³⁷

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There is a potential impact to the CMV industry associated with changes to the CMV regulations contained in the bill; however, the impact is indeterminate at this time.

Classifying charter buses as apportionable vehicles may change the registration fees for these vehicles; however, the actual impact for any specific vehicle will be based on motor vehicle details, jurisdictions where the vehicle travels, and the mileage percentages in each of the jurisdictions.³⁸

Persons who use any type of device to defeat, block, disable, jam, or interfere with a GPS device in the course of committing an offense of theft will be subject to enhanced penalties. This same provision may serve to deter theft and enhance productivity for the CMV industry.

D. FISCAL COMMENTS:

According to DHSMV, failure to comply with FMCSA compatibility requirements could lead to a reduction of up to 4 percent of the state's Federal-aid highway funds for the first year of noncompliance and up to 8 percent of loss of Federal-aid highway funds for second or subsequent years of noncompliance. Additionally, noncompliance could lead to the loss in the awarding of potential future highway grants.³⁹ The bill updates these requirements to address these concerns.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have

³⁶ Email from Department of Highway Safety and Motor Vehicles, February 16, 2017 (copy on file with Transportation & Infrastructure Subcommittee).

³⁷ Email from DHSMV January 19, 2018. Copy on file with Transportation & Infrastructure Subcommittee.

³⁸ Email from Department of Highway Safety and Motor Vehicles, February 16, 2017 (copy on file with Transportation & Infrastructure Subcommittee).

³⁹ Email from Department of Highway Safety and Motor Vehicles, February 17, 2017 (copy on file with Transportation & Highway Safety Subcommittee).

to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES